



VIA www.regulations.gov comment form:

July 9, 2019

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

**Re: Request for Comments
Department of Housing and Urban Development; Housing and Community
Development Act of 1980: Verification of Eligible Status
Docket No. FR-6124-P-01, RIN2501-AD89**

Dear Sir or Madam:

We are writing to submit comments for consideration in response to the Department of Housing and Urban Development (HUD) proposed rule regarding verification of eligible status published in the Federal Register on May 10, 2019.¹ We would like to thank the government for the opportunity to respond to this Federal Register announcement regarding the proposed rule related to the Housing and Community Development Act of 1980, verification of eligible status.

Statement of Interest

DePaul University Asylum & Immigration Law Clinic (AILC) collaborates with over 31 community-based organizations (CBO) throughout the state of Illinois² to enhance access to legal information and systemically complement the provision of immigrant legal services within organizations of limited resources. The not-for-profit organizations with which we partner include refugee resettlement agencies, mutual aid organizations, social services organizations and other organizations serving immigrant and refugee communities. Most are Department of Justice (DOJ) recognized organizations utilizing accredited representatives to appear before

¹ REGULATIONS.GOV, *Housing and Community Development Act of 1980: Verification of Eligible Status*, 84 FR 20589, <https://www.regulations.gov/document?D=HUD-2019-0044-0001>.

² List of partner organizations available at <https://law.depaul.edu/academics/experiential-learning/legal-clinics/clinics/asylum-immigration/confia/Documents/CBO-map-live-links-Sep,%2011%202017.pdf>

USCIS on behalf of low-income immigrants and refugees. They regularly work with families of mixed immigration status and thus will be directly impacted by this proposed rule. These comments reflect those concerns of our CBO partner agencies regarding the proposed rule. Additionally, the following specific CBO partners have signed on below:

Erie Neighborhood House, Chicago, IL
Polish American Association, Chicago, IL
The Resurrection Project, Chicago, IL
University YMCA, Champaign, IL

Again, we are grateful for the opportunity to respond to the proposed rule and trust the agency will meaningfully consider these comments.

Comments to the Proposed Rule

The purported rationale for the proposed rule on eligibility verification is to ensure that “only eligible persons receive benefits.”³ In both law and practice, the current statutory scheme appropriately addresses this concern. The proposed rule change is not necessary and in fact is in conflict with the existing statutory scheme, the realities of mixed-status families in the United States, and will likely undermine safety and security of immigrants and citizens alike and for these reasons should be withdrawn.

There are numerous categories of immigration status, some of which qualify for HUD financial assistance and some of which, notwithstanding lawful status, do not qualify for assistance. Under the current scheme, HUD financial assistance is available to U.S. citizens and certain qualified immigrants.⁴ Undocumented immigrants and immigrants in otherwise lawful immigrant categories, including for example U visa holders (for victims of certain crimes who have provided assistance to law enforcement) and Temporary Protected Status (TPS) holders, do not qualify for, nor do they benefit from, HUD assistance.

The reality of mixed-status families is acknowledged in the existing statutory scheme, which accounts for different immigration statuses within a household and affords HUD benefits accordingly. Under the current scheme, only those with qualifying immigration status, including U.S. citizenship, receive financial assistance. The plain language of the HCDA is clear: financial assistance for mixed status families “*shall* be prorated.”⁵ (emphasis added). HUD offers no evidence that proration is not mandatory. The proposed rule inappropriately attempts to provide HUD with discretion to decide whether to prorate assistance to mixed status families, in direct contravention of the plain language of the HCDA.

“Financial assistance” is defined in the Housing and Community Development Act of 1980 (HCDA) as assistance made available by HUD under a myriad of housing acts, including the

³ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,590 (proposed May 10, 2019).

⁴ 24 C.F.R. § 5.506

⁵ 42 U.S.C. §1436a(b)(2).

HCDA.⁶ To justify the rule change, HUD alleges that ineligible members of mixed status family households “indirectly receive assistance through the household’s income.”⁷ The purported “indirect assistance”, if it can be said that any assistance is received, is not provided by HUD. Therefore, this “indirect assistance” falls well outside of the statutory definition of “financial assistance” under the HCDA. Also, HUD has not provided any evidence that ineligible household members are receiving “financial assistance” under the current statutory scheme. This proposed rule does nothing to further the intent of the HCDA to ensure that ineligible household members receive “financial assistance”.

Also, financial assistance is not conferred to U.S. citizens and eligible non-citizens until such immigration status is verified.⁸ The verification process requires submission of a sworn declaration, documentation of status and consent to verification.⁹ The HCDA specifically does not require the verification of the immigration status of all members of the household, but rather states that it does not provide benefits to those whose eligibility has “not been affirmatively established”.¹⁰ The proposed rule imposes a requirement to verify eligibility status that is not required under the statute without sufficient justification, since the act of proration already serves the purpose of excluding non-eligible immigrants from receiving financial assistance.

The current scheme acknowledges the reality of the variety and fluidity of immigration status and the reality of mixed-status families in the United States, while also ensuring U.S. citizens and eligible non-citizens are not discriminated against due to the immigration status of other members of their household. Many undocumented individuals in the United States live with U.S. citizen or lawful permanent resident or other authorized immigrant spouses and children. Over five million U.S. citizen children reside with at least one undocumented parent.¹¹ The significant ties that U.S. citizens and other lawful immigrants have to undocumented immigrants also holds true in Illinois where undocumented immigrants live overwhelmingly in families, many of which are mixed status families that include U.S. citizen spouses and children. Approximately 886,000 Illinois residents live with relatives in family households that include at least one undocumented immigrant. Of these residents, roughly 799,000 (90%) live in mixed-status households that also include a family member who is a U.S. citizen or has lawful immigration status. Roughly 711,000 (80%) live in a household with at least one native-born U.S. citizen and one undocumented immigrant. Of the approximately 145,000 Illinois families with at least one undocumented parent, 88% include at least one native-born child and 74% include only native-born children.¹²

⁶ 42 U.S.C. §1436a(b)(1)

⁷ Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, Docket No: FR-6124-P-01.

⁸ 24 C.F.R. §§5.506-5.508, 5.512.

⁹ 24 C.F.R. §5.508.

¹⁰*Id.*

¹¹ MPI Fact Sheet, *Settling In: A Profile of the Unauthorized Immigrant Population in the United States* by Julia Gelatt and Jie Zong, November 2018.

¹² Rob Paral and Associates & Illinois Coalition for Immigrant and Refugee Rights, Illinois’ Undocumented Immigrant Population: A Summary of Recent Research (February 2014), available at <https://robparal.com/wp-content/uploads/Illinois-Undocumented-Immigrant-Population.pdf>

The proposed rule hurts U.S. citizens and the immigrants in their families. As we have already seen in Illinois, the proposed rule change regarding the definition of public charge for purposes of assessing admissibility already has had a chilling effect on residents of Illinois accessing and receiving public benefits regardless of immigration status. Following the proposed public charge rule change, otherwise qualified immigrants feared accessing and receiving public benefits, including those necessary for their health and safety. Regardless of their eligibility for SNAP, TANF, Medicaid or other benefits, and regardless of lawful immigrant status, residents of Illinois feared immigration penalties should they access these benefits. Community-based organizations reported qualified immigrants asking for information about how to dis-enroll from means-tested programs focused on maintaining health and nutrition. Our colleagues shared with us stories of families who no longer participated in school lunch programs for fear of negative immigration consequences.

We can predict that similar consequences will follow from the proposed HUD rule, which is likely to create fear amongst immigrants who would otherwise qualify for HUD benefits. In fact, HUD acknowledges that even individuals who would not be impacted by the new rule may nevertheless withdraw from participation in HUD programs from fear and misunderstanding.¹³

Additionally, the new rule would have an adverse impact on elderly immigrants. Under the proposed statutory scheme, elderly immigrants who are not grandfathered would face additional verification processes. Immigrant-serving nonprofits in Illinois who regularly work with elderly immigrants can attest to the difficulty faced by this population in accessing documents establishing qualifying immigration status. For elderly immigrants who obtained lawful status in their youth under previous immigration laws, verification of qualifying immigration status can be hard to obtain and difficult to interpret. Also, the process of obtaining older records can often take longer than the six months the proposed rule would give to someone who may be unable to verify their immigration status, and therefore their eligibility for housing benefits. Immigration practitioners regularly report waiting over a year for a response to a Freedom of Information Act (FOIA) request from various Department of Homeland Security (DHS) agencies, despite the statutory requirement to respond to a FOIA request within 20 days.

Other vulnerable populations are also likely to be adversely impacted by the proposed rule, including victims of crime. Congress has often-recognized special considerations associated with certain populations. Congress established the U and T visas through the Trafficking Victims Protection Act of 2000 (TVTPA), with the stated finding that “adequate services and facilities do not exist to meet victims’ needs regarding health care, housing, education and legal assistance.”¹⁴ Illinois non-profits working with low-income immigrants regularly work with immigrant victims of crime who have provided assistance to law enforcement and either have U visa status or some other authorized status while awaiting conferral of the U visa, which provides a path to lawful permanent resident status. It is not uncommon to see mixed status families that include U.S. citizens, lawful permanent residents, U visa holders (a lawful immigration status but one which does not qualify for HUD benefits) or those who have demonstrated prima facie eligibility for U visa status and for whom DHS has identified that immigration prosecutions should not be a

¹³ Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, Docket No: FR-6124-P-01.

¹⁴ Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [TVTPA].

priority. In these cases, we often see families recovering from the trauma of violent crimes and with acute need for safety and security within the family. The new rule, by forcing families to choose between withdrawing from benefits or separating in order to continue to receive HUD benefits, would have an adverse impact on this particularly vulnerable population.

Further, the proposed rule is inconsistent with other federal benefit programs which do not require proof of immigration status for family members who do not receive a benefit, including the families receiving aid through the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families program, and Medicaid.

Conclusion

We urge the agency not to adopt its proposal over objection of public comment, but rather maintain the long-standing policy of allowing U.S. citizens and qualifying immigrants in mixed status families to appropriately access housing assistance.

We again express our appreciation for the opportunity to comment on the proposed rule.

Kind regards,

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* Organizational information is provided for purposes of identification only. These comments do not represent the position of the affiliated organization.