



## COMMUNITY LEGAL AID SOCIETY, INC.

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July 9, 2019

Andrew Hughes  
Chief of Staff, Office of the Secretary  
U.S. Dept. of Housing and Urban Development  
451 Seventh Street SW  
Washington, DC 20410

*Submitted online at [www.regulations.gov](http://www.regulations.gov)*

**Re: HUD Docket ID: HUD-2019-0044, FR-6124-P-01 Housing and Community Development Act of 1980: Verification of Eligible Status**

Dear Mr. Hughes:

I am writing on behalf of Community Legal Aid Society, Inc. (CLASI) in response to the Department of Housing and Urban Development's (HUD) Notice of Proposed Rulemaking, "Housing and Community Development Act of 1980: Verification of Eligible Status," which was published in the Federal Register on May 10, 2019. CLASI unequivocally opposes the proposed rule as it will have a persistent and expansive negative impact on the most vulnerable clients served by our programs.

CLASI is a non-profit law firm founded in 1946. Our mission is to combat injustice through creative and persistent civil legal advocacy – through individual representation, community education, and policy work – on behalf of vulnerable and underserved Delawareans. CLASI provides free civil legal services to Delawareans as follows:

- People with disabilities, as Delaware's Protection and Advocacy System;
- Older Delawareans (age 60 and over);
- Victims of housing discrimination, under HUD's Fair Housing Initiative Program;
- People living in poverty;
- Survivors of domestic violence; and
- Non-citizen victims of crime, abuse, and neglect.

## **I. The proposed rule will cause devastating harm to already vulnerable disadvantaged individuals and families.**

The proposed rule significantly restricts HUD eligibility for federal housing assistance based on immigration status. It also imposes overly stringent documentation requirements for anyone applying or currently receiving covered housing subsidies, including United States citizens, and also reduces access to affordable housing for individuals and families in desperate need of stable housing.

While HUD contends that the proposed rule is intended to address the lack of affordable housing, HUD's own analysis undercuts the reasoning offered by HUD as it concludes that fewer families are likely to receive assistance as a result of the rule's implementation. According to a Center on Budget and Policy Priorities (CBPP) analysis of HUD administrative data, it is estimated that approximately 70 percent of mixed status family households include children, individuals with disabilities, and elderly individuals.<sup>1</sup> Further, HUD itself estimates suggest that over 55,000 children will be impacted by the proposed rule, including many U.S. eligible citizen children.

### The proposed rule will cause homelessness and separate families.

Under the current rules, a mixed status family household, where only part of the family is eligible for a housing subsidy is able to reside together by paying rent through a prorated calculation, but the proposed rule changes this practice drastically and requires all household members to meet eligibility requirements for subsidies. Making such drastic changes to the law will harm families in our community by causing them to lose their homes through evictions, homelessness, separation from their loved ones, and trauma-related declines in health. The proposed rule will be detrimental to the overall health of Delawareans, and is contrary to our country's commitment to inclusion, and integration of immigrants into the United States, largely through family reunification. It will cause the breakup of intact family units.

Many of the individuals and families that will be harmed by the proposed rule include survivors of domestic violence and sexual assault. Survivors of domestic violence and sexual assault are typically abused by power and control tactics perpetrated by abusers that result in victims feeling that they lack any control or stability over their safety or lives. Often, having a stable and safe place to call home is the first step in beginning to heal from the cycle of abuse and trauma. The proposed rule will rob survivors of the safety net established to effectively rebuild their lives in a long-term, stable, trauma-free environment.

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<sup>1</sup> National Low Income Housing Coalition, *citing* CBPP analysis of HUD administrative data. Data include Section 8 and public housing programs, but do not include the Rent Supplement, Rental Assistance (RAP), Section 236, Section 235, Section 23 Leasing Housing Assistance, or Housing Development Grant programs.

The overly stringent documentation requirements will harm vulnerable groups in our community and cause homelessness.

The proposed rule imposes overly stringent documentation requirements for everyone living in covered housing and threatens to negatively impact approximately 9.5 million individuals receiving HUD assistance.<sup>2</sup> Currently, tenants are able to provide a signed declaration of eligibility under penalty of perjury of their citizenship or eligible status, or to ask for a calculation based on ineligibility without providing proof of eligibility under a prorated formula. The proposed rule requires every individual to provide documentation of proof of citizenship, based on an overly restrictive list of permissible documents.

Individuals with severe and persistent mental disability will have a difficult time attaining access to the required documents. Similarly, an individual who is elderly may have difficulty finding the required documentation to remain in stable housing under the proposed rule. Studies reviewing documentation required to vote, and to maintain Medicaid benefits, have shown that vulnerable individuals: the elderly, individuals with a disability, low-income individuals, and people of color, have more difficulty obtaining required documentation.<sup>3</sup> When individuals are unable to provide the required documentation to remain in stable housing or qualify for housing, they will become homeless, making it even more difficult to maintain the documents necessary to qualify for HUD subsidized housing under the proposed rule.

The proposed rule is discriminatory.

The proposed rule is contrary to the mandate of the federal Fair Housing Act (FHA), to affirmatively further fair housing as interpreted by HUD “to require HUD program participants to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, . . .”<sup>4</sup> The AFFH Rule requires housing agencies receiving HUD funding to review and evaluate data to assess housing segregation and disparities and ensure that disparities in access to housing and opportunity are preemptively addressed without request by tenants solely via a complaint-based system. This proposed rule is a direct contradiction to the AFFH Final rule since mixed status families will be denied housing opportunities and their immigration status used to discriminate against them

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<sup>2</sup> Id. HUD Data: Section 214 Covered Programs, December 2017 data.

<sup>3</sup> Ina Jafe, “For Older Voters, Getting the Right Id Can Be Especially Tough, NPR” All Things Considered (Sept. 7, 2018) <https://www.npr.org/2018//09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough>; US Government Accountability Office, “Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens” (June 2009), <https://www.gao.gov/products/GAO-07-889>

<sup>4</sup> HUD promulgated Final Rule 80 Final Rule 4227 “Affirmatively Furthering Fair Housing” Docket No. FR-5173-F-04

directly or as pretext for discrimination in direct violation of the Federal Fair Housing Act.

## **II. The proposed rule will result in increased costs and negative long-term outcomes for individuals, organizations, and systems in Delaware.**

As a legal services organization dedicated to improving access to justice, increasing access to legal information, and improving our community, we are seeking to educate Delawareans about the proposed rule and its impact. Notwithstanding these efforts, uncertainty and confusion about what the proposed rule means and how it will be implemented will prevent many individuals from remaining with their families in a stable home environment. Such instability will undoubtedly have lasting negative effects on the health and well-being of individuals, and families across our state.

Individuals currently living in a mixed status family household will be evicted if the proposed rule is implemented, requiring housing authorities to expend time and financial resources to evict families, rather than expending those resources on other matters such as declining conditions of affordable housing, providing services and benefits for tenants, or addressing other operating considerations and concerns.

Consequently, when housing authorities begin implementing this proposed rule by evicting mixed status families, these financial burdens will shift to other community systems, such as the state courts, further stretching already overburdened resources, frustrating staff, and stalling community initiatives which could have otherwise benefited from the diversion of these resources had they not been needed to handle the increased evictions.

Mixed status families with some family members that are eligible to stay in the home and receive the subsidy and other ineligible family members will be faced with the terrible and heartbreaking choice to leave the home and break the family apart or allow everyone in the home to lose stable housing and become homeless. Families with young children that choose to separate will face devastating long-term consequences.<sup>5</sup> For families deciding to remain together and leave their

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<sup>5</sup> Regulatory Impact Analysis Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980 Proposed Rule Docket No: FR-6124-P-01. *Citing*, Studies on family structure and its implications on child well-being (economic mobility, cognitive, behavioral, and physical, and mental health) show that children growing up in two-parent household fare better, on average, than those in single parent households. See, for example, Brown, S., et al. (2015). Family Structure and Child WellBeing: Integrating Family Complexity, *Journal of Marriage and Family*; Schulz, N. (2013). The Consequences of Changing Family Structure, American Enterprise Institute; Deleire, T. and Loppo, L. (2010). Family Structure and the Economic Mobility of Children, The Pew Charitable Trusts; and Hanson, S. and Ooms, T. (1991). The Economic Costs and Rewards of Two-Earner, Two-Parent Families, *Journal of Marriage and Family*

homes, or families that have been evicted, they will likely end up homeless, which will place a strain on Delaware's already scarce resources.

The proposed rule will result in increased homelessness in Delaware. It also undercuts HUD's initiative within the state to end homelessness through generous awards, most recently through a grant of over \$8 million. The costs of homelessness are substantial, and extend far beyond the cost to shelter a family facing homelessness. Costs of homelessness include those arising from intervention in school setting for homeless children, costs arising from health care, emergency services, and other community intervention costs and support. According to HUD's own Regulatory Impact Analysis, the cost associated with homelessness has been found to range from \$20,000 to \$50,000 per person per year.<sup>6</sup>

CLASI appreciates this opportunity to share our opposition to this policy change and proposed rule to the Housing and Community Development Act of 1980: Verification of Eligible Status. We strongly oppose the proposed rule, as it would cause significant and irreversible harm to people of low or moderate incomes, and people with disabilities and their families. We hope that you will review this comment, and reconsider the rule in total, and for all of the reasons outlined in this comment, we urge you to withdraw the rule in its entirety.

Respectfully submitted,



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<sup>6</sup> Regulatory Impact Analysis Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980 Proposed Rule Docket No: FR-6124-P-01. *Citing* Knotts, L. (2015). Ending Chronic Homelessness in 2017, United States Interagency Council on Homelessness. [www.usich.gov](http://www.usich.gov). Evans, W. N., Sullivan, J. X., and Wallskog, M. (2016). The impact of homelessness prevention programs on homelessness, Science 353(6300): 694–699. Spellman, B., et al. (2010). Costs Associated with First-Time Homelessness for Families and Individuals. Prepared for U.S. Department of Housing and Urban Development.