



CWDA
Advancing Human Services
for the Welfare of *All* Californians



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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 HUD Rules Docket Clerk:

The California State Association of Counties (CSAC) and the County Welfare Directors Association of California (CWDA) welcome the opportunity to comment on the May 10, 2019 Department of Housing and Urban Development (HUD) proposal to change the manner in which eligibility for federally-subsidized housing is determined for households containing persons with different immigration statuses.

For reasons outlined below, CSAC and CWDA oppose the proposed rule. We urge HUD to withdraw it and retain its decades-long rules and regulations governing the matter. We assert that the rule would lead to increases in housing instability and homelessness for families receiving federally subsidized housing and shift federal costs and administrative burdens to counties.

Overview

The proposed rule would prohibit “mixed immigration status families” from living in public housing and Section 8 programs. Mixed-status families are households that include members who are both eligible and ineligible for housing assistance based on their immigration status. Current law and accompanying regulations allow members of mixed-status families to live together in subsidized housing, so long as the housing subsidy is decreased proportionally to prohibit the ineligible members from receiving assistance. This longstanding rule has been effective in achieving this aim while ensuring eligible household members are able to continue receiving this needed assistance. Under the proposal, families with members who are deemed “ineligible” will be evicted from subsidized housing within 18 months.

CSAC/CWDA HUD Immigration Comments

Section 214 of the Housing and Community Development Act of 1980 limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories. Nearly all of the children in mixed-status families who are receiving HUD assistance are U.S. citizens and/or lawful permanent residents (LPR) who live with parents or other adults who do not have eligible immigration status. After Section 214 was enacted, Congress clarified its intent by amending the law in 1996 to include a proration provision to ensure that an ineligible household member would not receive a subsidy.

The statute conveys this intent. 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).

Under the current proposal, tens of thousands of public housing providers and private landlords would be burdened with collecting and verifying documentation not previously required. Millions of currently assisted individuals would have to prove their citizenship or other eligible status, as well as all future housing assistance applicants. New policies would also need to be created to determine which families may continue receiving assistance and how to evict those households who are determined to be ineligible. These unreimbursed administrative costs will be a disincentive for providers when considering whether to even continue to participate in federal housing programs, in an environment where there is already a critical lack of affordable housing in many parts of the country, including California.

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. HUD’s statistics show that 70 percent of mixed status families are composed of eligible children and ineligible parents. More than 38,000 U.S. citizen and otherwise eligible children live in these families, and over 55,000 eligible children live in mixed status families overall. Most of these families will likely forgo the subsidies to avoid separation, especially given that from a practical perspective, parents cannot leave their children to live separately in a different home to preserve their eligibility. In fact, HUD notes that it “expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.” Therefore, this rule would effectively evict as many as 108,000 individuals in mixed-status families (in which nearly 3 out of 4 family members are actually eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule. This housing loss will be devastating to these families as well as to local communities.

Finally, the cost of the proposal will decrease the number of families receiving assistance. HUD estimates that evicting the 25,000 mixed status families with households comprising of members who are all eligible, would cost HUD \$372 million to \$437 million annually. This is an unnecessary expenditure of funds in a program that is critical to the well-being of families, especially because Congress has already created a working solution (proration of the benefit) for the families that are now being targeted by this proposal.

Impact on Children and Families

Counties in California are responsible for supporting low-income children and families as they strive to become more stable economically. According to a Center on Budget and Policy Priorities' analysis of 2017 HUD administrative data, there are 436,340 households in the State that are receiving public housing, Section 8 rental assistance or support from the Housing Choice Voucher Program. Of those households, 9,320 contain an ineligible noncitizen. Of the 936,830 total individuals receiving federal housing support in California, 85,920 are noncitizens.

California's counties and our community-based partners will bear the responsibility of addressing the fallout of the proposed rule and the thousands of individuals and families who would lose housing. The impact of the rule would be particularly acute in our state, given that we have both the highest immigrant population and highest housing costs in the nation. As of 2012, 27 percent of California's residents were foreign born. And, a 2018 report from the National Low-Income Housing Coalition revealed that eight of the ten highest rental cost areas in the country are located in California. The proposed rule, combined with the 'chilling effect' and actual impact of other regulatory proposals to restrict further immigrants' eligibility for federal programs, will place even further burdens on immigrant families who have chosen our state and nation to work and contribute to the communities in which they live.

This proposed HUD policy will shift costs to counties, including the costs of protecting and serving immigrant children and the costs of responding to increased housing instability among families. Mixed immigration status families will likely choose to stay together and forgo federal housing supports. Seventy percent of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent. The scientific evidence is clear that such decisions and situations lead to toxic stress and trauma in children. The HUD background regulatory impact analysis even addresses the impacts, albeit with a different policy lens by stating: "HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified."

According to data from Child Trends, approximately 18 million children in the U.S. live in a family with at least one immigrant parent. About five million children (more than 80 percent of them are U.S. citizens) live with at least one undocumented parent.

As mentioned previously, HUD estimates that 55,000 children will be displaced and at-risk of homelessness as a result of implementation of this rule, further exacerbating the issue of homelessness which is already a significant issue in our state. Nationally, the U.S. Department of Education identified 1.3 million homeless children in the 2016-2017, which is a 70 percent increase since the 2007-2008 school year.

Impact on Older Adults

According to the Center on Budget and Policy Priorities' analysis of HUD data, nearly two million older adults receive federal housing assistance. Housing providers will need to collect status documentation from 120,000

older immigrants. Many of these recipients live on low and fixed incomes. Consequently, they are at increased risk if they live in mixed-status families. Furthermore, the proposed rule will require all U.S. citizens to provide proof of citizenship under penalty of perjury and will also require noncitizens 62 years old or over to provide additional documentation of their immigration status or risk losing their housing. County agencies are well aware that older individuals often encounter challenges obtaining and submitting documentation, including difficulties in traveling to county or state offices to replace and pay for lost records. Counties are also concerned about the chilling effect of the proposal, given the difficulty some older adults may encounter in searching for these documents in the first place.

Impact on Public Housing Providers and Private Landlords

In addition to the impact on the individuals and families counties serve, the rule will also increase the administrative burdens and costs on our public agencies and private landlords that provide housing via the affected programs. Those entities will be tasked with collecting documents “proving” the citizenship or status of more than nine million residents currently receiving HUD assistance who have previously attested to their status under penalty of perjury, as well as the citizenship/status of future applicants for assistance. The housing provider will bear the costs of these new procedures and the legal and other associated costs of evicting individuals and families unable to meet the paperwork requirements.

For all of the above reasons, we urge HUD to withdraw or otherwise rescind the proposed rule.

Thank you for your attention to our comments. Should you have questions about our views, please contact Cathy Senderling-McDonald, CWDA Deputy Executive Director, at csend@cwda.org, 916.443.1749; Chris Lee CSAC Legislative Representative for Housing, Land Use & Transportation at clee@counties.org, 916.327.7500 or Tom Joseph, Washington Representative for both CWDA and CSAC at tj@paragonlobbying.org 202.898.1446.

Sincerely,



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