

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 Sir/Madam:

Bet Tzedek writes in response to the Department of Housing and Urban Development's (HUD) proposed rule to express our strong opposition 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 proposed rule would cause serious harm to various members of our immigrant communities, including older immigrants and their families, children, individuals who identify as LGBTQ, U.S. citizens, and various other groups assisted by Bet Tzedek. We urge the rule to be withdrawn in its entirety, and that HUD's long-standing regulations remain in effect.

Bet Tzedek, the House of Justice, was founded in 1974 by a small group of lawyers, rabbis, and community activists who came together to assist aging Holocaust survivors and other low-income community members who were being displaced from their homes as the Fairfax neighborhood underwent gentrification. More than 40 years later, Bet Tzedek has grown from a small volunteer-run operation to one of the nation's premier poverty law organizations. Harnessing an award-winning pro bono model, Bet Tzedek has assisted more than 500,000 people since our doors opened through education and outreach, self-help assistance, advice and counsel, direct representation, complex litigation, and policy advocacy.

Bet Tzedek's mission is to provide free legal services to those who need them the most. Our staff (including 44 attorneys and 7 paralegals) and over a thousand pro bono volunteers provide a full spectrum of legal services to 40,000 people per year. Core programs and areas of expertise include: elder law, public/disability benefits, family caregiver legal needs, real estate fraud and foreclosure prevention, employment law, tax, housing and homelessness prevention, small business development, child guardianship, counsel for unaccompanied minors, transgender rights, and Holocaust reparations. Bet Tzedek's services are provided at our offices in an area of Los Angeles County known as "Koreatown" and at more than 30 community-based locations, including courthouses, senior centers, food pantries, and health care facilities.

Although HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide,¹ Bet Tzedek recognizes that the proposed rule is a part of the current

¹ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants from Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.c6fd40565b83.

administration's coordinated attack on immigrant families.² We all share the concern that millions of U.S. households struggle to find affordable housing in the ongoing nationwide housing crisis, but blaming struggling immigrant families will not fix this problem. Indeed, HUD's own analysis of the proposed rule concludes that fewer, not more, families are likely to receive assistance because of the rule.³ The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

Sadly, this is not the first time the United States government has placed the burden of a larger economic issue on the backs of immigrants or that pernicious beliefs regarding immigrants have been leveled against them. As has been well documented, in the 1930s, amidst fears that immigrants would compete for scarce jobs and burden public services, the United States government turned away Jews fleeing Nazi persecution. Given this history, it is understandable why among Bet Tzedek's first clients were low-income Holocaust survivors who immigrated to the US and required assistance to help remain in low-income, subsidized and/or rent-controlled housing. Today, Bet Tzedek continues its work on behalf of immigrant communities, ever mindful of the belief that one does not turn away, wrong, or oppress strangers from a strange land. A significant number of Bet Tzedek's clients fall squarely within the demographic of individuals potentially impacted by the proposed rule. While Bet Tzedek's funding sources allow for various eligibility standards, more than 50% of the clients served thus far in 2019 have been identified as being below 125% of the Federal Poverty Line. This does not consider the clients who receive some form of government housing assistance. Out of the clients served thus far in 2019, at least 30% self-identify or are believed to be undocumented, with a significant number in mixed-status households. It is with this historical context in mind that Bet Tzedek offers the following comments.

I. The Proposed Regulations Directly Conflict with The Underlying Statute and Ignore Amendments Made by Congress to the Statute.

It is critical to first note that the proposed regulations are in direct conflict with 42 U.S.C. § 1436a and ignore amendments that Congress made to Section 214 of the Housing and Community Development Act of 1980 (Section 214).

In the proposed rule, HUD claims to be revising its regulations "into greater alignment with the wording and purpose of Section 214," namely by barring mixed-status families from receiving assistance. To support its claim, HUD insists that Section 214 prohibits the indefinite receipt of prorated assistance by mixed-status families, but it cannot point to any statutory language containing such an edict. In fact, Section 214 clearly conveys that

² See, e.g., NAT'L IMMIGRATION L. CTR., *Understanding Trump's Muslim Bans* (updated Mar. 8, 2019), <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. TIMES (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>; Dan Lamothe, *Pentagon Will Shift an Additional \$1.5 Billion to Help Fund Trump's Border Wall*, WASH. POST (May 10, 2019), https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm_term=.37360e7cda10; REUTERS, *Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits*, N.Y. TIMES (May 3, 2019), <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

³ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01 (Apr. 15, 2019).

Congress intended to ensure that individuals with eligible immigration status would receive assistance while keeping mixed status families together in the same home. The plain language of the statute conveys this intent. For example, 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.⁴ 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.

The legislative history bolsters the straightforward reading of the statute. Section 214 was passed in 1980. In 1988, Congress included a provision by which mixed-status families who had been receiving the full subsidy prior to the statute’s passage could avoid family breakup.⁵ In its proposed rule, HUD twists that provision, which provides for temporarily grandfathered assistance, to claim that Congress only intended for prorated assistance to be provided for a limited time. However, Congress added the proration provisions in 1996.⁶ Congress has been consistent in attempting to guarantee that scarce federal subsidies would be provided for eligible immigrants and citizens while preserving the integrity of mixed-immigration status families. HUD’s interpretation requires ignoring the plain language and the history of the statute. HUD should therefore withdraw its rule because it is in direct conflict with the congressional mandate of Section 214 to provide prorated assistance to mixed status families.

II. The Proposed Rule Will Negatively Impact Already Vulnerable and Disadvantaged Populations.

The Proposed Rule Stands To Jeopardize The Family And Housing Stability Of Tens Of Thousands Of Families, Both Of Which Are Critical To Getting Families On A Pathway To Self-Sufficiency And Better Life Outcomes.

The proposed rule threatens to undermine the well-being of low-income U.S. citizens, immigrants, and their families. In California alone, there are over 60,000 households with a non-citizen and over 9,000 mixed-status households. Those who are non-citizens are currently not included in the formulation for public housing assistance benefits, but under the proposed rule, all families with at least one member who is a non-citizen will be faced with eviction. Being evicted from stable housing would negatively impact these families. Research shows that families who are evicted are more likely to experience homelessness, move into substandard or overcrowded housing, and have a sequence of adverse physical and mental health outcomes.⁷

In order to avoid eviction, the rule would force mixed status families to make an impossible decision—either break up to allow eligible family members to continue receiving assistance, or forgo the subsidies so families can

⁴ 42 U.S.C. § 1436a(i)(2)(A).

⁵ Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

⁶ Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

⁷ Bovell-Ammon A & Sandel M., *The Hidden Health Crisis of Eviction*, BOS. U. SCH. OF PUB. HEALTH (2018), <http://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>; Desmond M. & Tolbert Kimbro R., *Evictions Fallout: Housing, Hardship, and Health*, 94 SOCIAL FORCES 295 (2015).

stay together. The families will most certainly suffer great hardship if they choose to separate the family unit. Family separations undermine family stability, and lead to toxic stress, trauma, and attachment issues in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of children later in life, and many parents struggle to restore the parent-child bond once it has been disrupted by a separation.⁸

However, the reality is that it is more likely that these families will forgo housing subsidies to avoid being separated from their loved ones. In fact, HUD is relying on this, noting in their regulatory impact analysis that “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”⁹ Therefore, this rule would effectively evict as many as 108,000 individuals in mixed status families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule.¹⁰ These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.¹¹

These outcomes will not only hurt families while they struggle to find housing in the short term, but will also lead to reduced opportunities and increased health problems for these families in the long term.¹² Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, increased likelihood of mental health problems in children,¹³ and a dramatic increase in 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, sustained employment, and overall self-sufficiency.

This would all occur at a point in time when affordable housing in major cities such as Los Angeles is becoming increasingly difficult to find for families living below the poverty line. Working families are struggling to keep up with sky-rocketing rents and destabilization of neighborhoods due to gentrification. The rule fails to consider that immigrants live disproportionately in high cost housing areas and pay more for housing than U.S. citizens. Immigrants and their families currently face additional barriers in finding affordable housing.¹⁴ Compared to U.S.

⁸ Laura C. N. Wood, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, 2 *BMJ PAEDIATRICS OPEN* (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6173255/>.

⁹ 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 7 (Apr. 15, 2019).

¹⁰ *Id.* at 8.

¹¹ PRATT CTR. FOR CMTY. DEV., *CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO* (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

¹² Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 *PEDIATRICS* 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

¹³ See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CENTER ON BUDGET AND POLICY PRIORITIES (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children’s Defense Fund* (Jan. 2015), <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

¹⁴ See ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA* (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

citizens, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing.¹⁵ Many of these additional burdens are attributable to the fact that immigrants disproportionately live in states with high housing costs.¹⁶ For example, California—the state with the largest immigrant population¹⁷—has eight of the ten highest rental cost metropolitan counties in the country.¹⁸ The proposed rule will introduce additional burdens to immigrant families that already face significant hurdles in securing affordable housing, placing thousands of families at risk of homelessness. The proposed rule does not take into account these unique hardships and costs faced by immigrants in the U.S. housing market, and the rule should be withdrawn until HUD completes an in-depth study of these issues.

The Effects Of The Rule Change On Families Will Be Particularly Devastating Among The Children In Mixed Status Families, Nearly All Of Whom Are U.S. Citizens.

Approximately 18 million children in the U.S. live in a family with at least one immigrant parent,¹⁹ and an estimated 5 million children (of whom more than 80 percent are U.S. citizens) live in homes with at least one undocumented parent.²⁰ While the majority of children in these households are citizens, the fact that they have at least one member of their household who has limited or no eligibility for public assistance based on their immigration status means that children in immigrant families have higher rates of poverty than children in U.S.-born families.²¹

Access to housing assistance already remains limited for families—only one in four families who are eligible for rental assistance in the U.S. receive it. Nearly 40% of the of households currently receiving rental assistance include children.²² With such scarce resources, child and youth homelessness has skyrocketed in the United States – the U.S. Department of Education identified 1.3 million homeless children in the 2016-2017 school year, which is a 70 percent increase since the 2007-2008 school year.²³ The proposed rule will only serve to further

¹⁵ Eileen Diza McConnell, *Who Has Housing Affordability Problems? Disparities in Housing Cost Burden by Race, Nativity and Legal Status in Los Angeles*, 5 RACE & SOCIAL PROBLEMS 173, 178 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3784340/pdf/nihms440365.pdf>.

¹⁶ See Matt Levin, *Fleeing War-Torn Homes for Crippling Rents—California Housing Costs Creating Harsh Reality for Refugees*, CALMATTERS (July 19, 2018), <https://calmatters.org/articles/refugees-housing-costs-california/>.

¹⁷ Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CTR.: FACTTANK (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

¹⁸ ANDREW AURAND ET AL., NAT'L LOW INCOME HOUSING COALITION, OUT OF REACH: THE HIGH COST OF HOUSING 14 (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf.

¹⁹ *Databank Indicator: Immigrant Children*, CHILD TRENDS (Oct. 2014), www.childtrends.org/?indicators=immigrant-children.

²⁰ 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.

²¹ *Ibid* 1. Page 140.

²² “National and State Housing Fact Sheets & Data.” Center on Budget and Policy Priorities, August 2017, <https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>.

²³ “Federal Data Summary School Years 2014-2015 to 2016-2017, National Center for Homeless Education, February 2019, <https://nche.ed.gov/wp-content/uploads/2019/02/Federal-Data-Summary-SY-14.15-to-16.17-Final-Published-2.12.19.pdf>.

increase child homelessness. Indeed, HUD estimates that 55,000 children will be displaced and end up at-risk of homelessness as a result of implementation of this rule.

The impact on children would be devastating. Research has shown that economic and housing instability impedes children's cognitive development, leading to poorer life outcomes as adults.²⁴ Homelessness, even for a brief time, is extremely detrimental to a child's healthy development. The younger and longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes.²⁵ Homelessness is also associated with an 87 percent greater likelihood of a child or youth dropping out of school.²⁶ Housing instability is directly correlated to decreases in student retention rates, and contributes to high suspension rates, school turnover, truancy, and expulsions, all of which limit students' opportunities to obtain the education they need to succeed later in life.²⁷ The alternative, family separation, is a stressful and traumatizing experience for children, which can alter the architecture of a child's developing brain and have lifelong consequences.²⁸ Finally, a recent landmark study from the National Academy of Sciences finds that child poverty and homelessness costs our society over \$1 trillion each year.²⁹ This same study finds that making housing vouchers available for 70 percent of the families who are currently eligible would reduce child poverty by 3 percentage points.

The proposed rule takes the opposite approach by taking away housing assistance from thousands of children and families, ignoring research from leading experts regarding what is best for the well-being of the nation's children and families. Research shows that rental assistance for households with children results in significant positive effects for future child outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year,³⁰ and can improve a child's chances for long-term economic mobility—one study finds that children in households receiving Housing Choice vouchers have higher adult earnings and a lower chance of incarceration.³¹ Housing assistance also improves children's health outcomes. Children of families receiving housing assistance had a 35 percent higher chance of being labeled a "well child," a 28 percent

²⁴ 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>.

²⁵ Megan Sandel, Richard Sheward, and Lisa Sturtevant, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health*, Insights from Housing Policy Research (Washington, DC: Center for Housing Policy; Boston: Children's HealthWatch, 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

²⁶ Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell, *Hidden in Plain Sight: Homeless Students in America's Public Schools* (Washington, DC: Civic Enterprises and Hart Research Associates, 2016), <http://www.americaspromise.org/report/hidden-plainsight>.

²⁷ 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).

²⁸ Simha S., *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C MED J. 95, 96 (2019).

²⁹ National Academies of Sciences, Engineering, and Medicine 2019. *A Roadmap to Reducing Child Poverty*, The National Academies Press, 2019, <https://doi.org/10.17226/25246>.

³⁰ Liana Fox, "The Supplemental Poverty Measure: 2017," September 2018, <https://www.census.gov/library/publications/2018/demo/p60-265.html>.

³¹ Andersson, Fredrik and Haltiwanger, John C, et. al. "Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing." National Bureau of Economic Research, Working Paper No. 22721, September 2018, <http://www.nber.org/papers/w22721>.

lower risk of being seriously underweight and a 19 percent lower risk of food insecurity.³² 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.³³ Evicting families or forcing them to separate will not only harm children’s health today, but well into the future. We need policies that expand, not reduce, access to stable homes for families with children in order to ensure all children have opportunities to be healthy and reach their highest potential.

Finally, it is important to be clear that by eliminating the ability of mixed status families to receive prorated assistance on a permanent basis, the proposed rule robs otherwise eligible children of housing subsidies because they have parents with ineligible noncitizen status. Section 214 limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories.³⁴ Nearly all of the children in mixed status families who are receiving HUD assistance covered by Section 214 are U.S. citizens and lawful permanent residents (LPR) who live with parents or other adults who do not have eligible immigration status. HUD’s statistics show that 70% of mixed status families are composed of eligible children and ineligible parents. There are over 38,000 U.S. citizen and otherwise eligible children in these families, and over 55,000 eligible children in mixed status families overall.³⁵ Since these children lack the legal capacity to sign leases themselves, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. However, by prohibiting the ineligible adults from living in subsidized units, the proposed rule forecloses the possibility of these U.S. citizen and LPR children from receiving any housing assistance under the covered housing programs.

The Proposed Rule Will Have a Negative Impact on the Aging Population

Federal housing assistance programs provide vital support to 1.9 million older adults who would otherwise be unable to afford the cost of shelter.³⁶ 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

³² Elizabeth March, “Rx for Hunger: Affordable Housing,” *Children’s Health-Watch; Medical-Legal Partnership*, December 2009, http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf.

³³ “The State of the Nation’s Housing 2018”, Joint Center for Housing Studies of Harvard University, tabulations of US Bureau of Labor Statistics, 2016 Consumer Expenditure Survey, 2018, http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

³⁴ 42 U.S.C.A. § 1436a(a)(1)-(6) (West 2019) (Noncitizens eligible for Section 214 housing programs: Lawful Permanent Residents, VAWA Self-Petitioners, Asylees and Refugees, Parolees, Persons Granted Withholding of Removal/Deportation, Qualified Victims of Trafficking, Persons granted admission for emergent or public interest reasons, Persons granted lawful temporary residence amnesty under the Immigration Reform and Control Act of 1986, Immigrants eligible for registry who entered the U.S. before June 30, 1948, Lawful U.S. residents and individuals who entered the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam, Immigrants admitted for lawful temporary residence prior to January 1, 1982).

³⁵ 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) (73% of eligible family members are children and there are a total of 76,141 eligible individuals in the covered programs, for a total of 55,582 eligible children; 70% of households are composed of eligible children with ineligible parents, for a total of 38,907 eligible children in households with ineligible parents).

³⁶ <https://apps.cbpp.org/4-3-19hous/PDF/4-3-19hous-factsheet-us.pdf>

spend on other basic needs, including food, medicine, transportation, and clothing.³⁷ 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. For example, households in Los Angeles are uniquely intergenerational in many communities where black and Latino families live. Although there is an economic basis for this, having grandparents live with their families is rooted in culture and values of sharing a home where children can know their grandparents and older adults can be cared for by their own children are immeasurable.

Furthermore, the proposed rule adds new documentation requirements that will be particularly burdensome on older adults.³⁸ As discussed in further detail below, the proposed rule will require all U.S. citizens to provide proof of citizenship and will also require noncitizens 62 years old or over to provide additional documentation of their immigration status. Older individuals face many challenges in getting this kind of documentation, including difficulties getting to government offices to replace lost records or coming up with the funds to replace these records. Indeed, some may have never been issued these documents in the first place.³⁹

The Proposed Rule Will Negatively Impact LGBTQ Communities

The proposed rule is likely to have a profound impact on the LGBTQ community, including thousands of bi-national same-sex couples. The most recent available data from the American Community Survey indicates that there are nearly one million same-sex couples in the United States;⁴⁰ as nearly one in ten LGBTQ adults are immigrants,⁴¹ it is likely that same-sex couples are bi-national at rates similar to the general population. Nearly one-third of LGBTQ immigrants are undocumented, indicating that a significant number of LGBTQ bi-national couples could be impacted by this proposed rule.⁴²

While we lack specific data on the use of public housing assistance by LGBTQ immigrants, we know that the need for housing support is high in this community as a general matter. As a result of systemic discrimination, LGBTQ people are 2.5 times more likely to receive public housing assistance than their non-LGBTQ peers. The

³⁷ See Justice in Aging, *Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food* (Apr. 2018), available at www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-Americans%E2%80%99-Basic-Needs_Health-Care-Income-Housing-and-Food.pdf

³⁸ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

³⁹ 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>.

⁴⁰ Census Bureau, "Household Characteristics of Opposite-Sex and Same-Sex Couple Households: 2017 American Community Survey," 2017, available at: <https://www.census.gov/data/tables/time-series/demo/same-sex-couples/ssc-house-characteristics.html>.

⁴¹ Gary J. Gates, "LGBT Adult Immigrants in the United States," The Williams Institute, March 2013, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-lgbt-immigrants-mar-2013/>

⁴² *Ibid.*

need for these programs is especially acute for transgender people, LGBTQ people with disabilities, and LGBTQ people of color.⁴³

Transgender communities of color would be greatly harmed by this proposed rule, given the severe, daily discrimination they face. One in five transgender people in the U.S. has been discriminated against when seeking housing, and more than one in ten have been evicted from their homes because of their gender identity.⁴⁴ Transgender immigrants who are receiving or are eligible to receive public housing assistance under Section 214 and housing vouchers would be faced with hardship under the proposed rule requirements to show citizenship. Costly burdens of legal name changes, birth certificate changes, and gender marker changes leave many transgender immigrants without proper documentation to prove their identity. If they cannot meet the requirements in the time period under the proposed rule, then they would be evicted and left with limited access to housing.

The Proposed Rule Change Would Have a Negative Impact on the Latino Community

There are more than 55 million Latinos in the United States today, comprising 18 percent of the total U.S. population, and approximately one in five Latinos are non-citizens.⁴⁵ By 2050, it is projected that nearly one-third of the U.S. workforce will be Latino.⁴⁶ Among Latino children, who account for a quarter of all U.S. children, the majority (52 percent) have at least one immigrant parent,⁴⁷ and more than half of children of immigrants are Latino.⁴⁸ Despite hard work and many contributions by Latinos to the economy, Latinos continue to face prejudice and discrimination throughout the United States, and many continue to struggle to meet basic needs, including finding a home they can afford. This proposal will harm the future of Latinos in the United States and unfairly harm Latino families.

Access to federal housing assistance has allowed hundreds of thousands of Latinos to lift themselves out of poverty. According to an analysis conducted by UnidosUS, federal housing assistance – including public and other subsidized housing – lifted approximately 800,000 Latinos out of poverty in 2017, including more than 280,000 Latino children.⁴⁹ While research suggests that Latinos remain underrepresented in these programs,⁵⁰ the proposed rule would deter many eligible Latinos from participating in public or subsidized housing programs, thus increasing housing insecurity for Latino families. As HUD acknowledges and as noted above, families that lose housing assistance are at risk of homelessness, with serious consequences for family well-being and child development. When families have access to housing assistance, they have more resources to cover the cost of

⁴³ Rooney, Whittington, and Durso, *Protecting Basic Living Standards for LGBTQ People*, AM. PROGRESS (2018), <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

⁴⁴ National Center for Transgender Equality, “Housing and Homelessness” available at <https://transequality.org/issues>

nutritious foods, health care, and other necessities.⁵¹ Where families live is also directly tied to where they work. If parents lose access to affordable housing, they may also be at risk of losing their jobs.

For progress to continue in the Latino community and our nation, immigrants should have an opportunity to support the resilience and upward mobility of their families. The proposed changes by HUD fail in this respect as Latino families of mixed immigration status would be forced to break up to receive housing assistance, to forego the assistance altogether, or face termination from the programs.

III. The Proposed Rule Will Ultimately Have a Detrimental Impact on U.S. Citizens Because of Unnecessary Documentation Requirements

The proposed rule imposes new documentation requirements on 9.5 million U.S. citizens and eligible older immigrants who receive or seek assistance from one of the three largest HUD rental assistance programs. The rule would require that all who declare they are U.S. citizens under penalty of perjury provide evidence of their citizenship, a practice that has proven to be burdensome, costly and unnecessary to protect program integrity.⁵² Currently, to establish eligibility for access to Section 214 housing assistance, U.S. citizens need to provide a declaration signed under penalty of perjury of their citizenship or nationality status. The proposed rule would require that these individuals also provide documentary proof of citizenship or nationality, such as a birth certificate, which can be extremely difficult for certain segments of the population. However, most people receiving federal rental assistance are less likely than others to have proof of citizenship readily available or to have other identification that states often require in order to issue a new (or a copy of a) birth certificate. A 2006 survey showed that as many as seven percent of citizens did not have citizenship documentation readily available.⁵³ Obtaining such documentation can be particularly difficult for U.S. citizens over the age of 50, citizens of color, citizens with disabilities, and citizens with low incomes. Older individuals face many challenges in getting this kind of documentation, including difficulties getting to government offices to replace lost records, coming up with the funds to replace these records, and some may have never been issued a birth certificate in the first place.⁵⁴ The same survey suggests that:

- At least 12 percent of citizens earning less than \$25,000 a year do not have proof of citizenship;
- Many people who do have documentation have birth certificates or IDs that don't reflect their current name or address, such as people who changed their name;
- 18 percent of citizens over the age 65 do not have a photo ID; and

⁵² Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5); Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CPBB (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

⁵³ 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

⁵⁴ 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>.

- 25 percent of African American citizens lacked a photo ID.

After Medicaid began implementing a citizenship documentation requirement, there was a sharp decline in Medicaid enrollment. Half of the 44 states responding to a Government Accountability Office survey indicated that Medicaid enrollment fell because of the citizenship documentation requirement. The GAO also found that states reported increased administrative costs and needing to spend more time providing help to applicants and beneficiaries, increasing their time spent on applications and redeterminations of eligibility.⁵⁵

For those who are unable to produce the required documents within the required time period under the proposed HUD rule, they will lose their housing assistance, and many will be evicted from their homes. A significant share could become homeless. The figures above suggest that hundreds of thousands of U.S. citizens could experience these harsh consequences under the proposed rule.

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.⁵⁶ 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. HUD has not accounted for these concerns in the proposed rule and should address these issues before finalizing the rule.

Finally, the proposed documentation requirements will be particularly burdensome for recipients of rental assistance who were formerly homeless, as well as for people experiencing homelessness who could be assisted by Section 214 programs in the future. People experiencing homelessness often lose important documents such as photo identification, birth certificates, and social security cards because they have no safe places to store them.⁵⁷ Adding more documentation requirements creates more barriers to housing for those who need it most and could cause many people who have gained stability through rental assistance to return to homelessness. HUD has failed to take into account the added costs and burdens of these new documentation requirements and should complete an analysis of these costs before finalizing the proposed rule.

As stated above, the unfair targeting of mixed status immigrant families and their children will harm not only sectors of the immigrant community, but also U.S. citizens who currently receive or are eligible to receive housing assistance under HUD programs. We urge HUD to immediately withdraw its current proposal, and instead dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

⁵⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens* (June 2007), <https://www.gao.gov/new.items/d07889.pdf>.

⁵⁶ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589, 20,592 (proposed May 10, 2019) (to be codified at 24 C.F.R. part 5).

⁵⁷ NAT'L L. CTR. ON HOMELESSNESS & POVERTY, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11 (Apr. 2004), https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.



Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me to provide further information.

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