



June 26th, 2019

Submitted via the Federal eRulemaking Portal at 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

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:

AIDS Alabama appreciates the opportunity to provide comments in response to the Department of Housing and Urban Development's (HUD) proposed rulemaking regarding verification of eligible status, as published in the Federal Register on May 10th, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). AIDS Alabama is a nonprofit organization that devotes its energy and resources statewide to helping people living with HIV/AIDS live healthy, independent lives and works to prevent the spread of HIV. Since 1986, our agency has operated programs and provided services that assist low-income individuals living with HIV and their families, including housing programs, rental assistance, social work and case management, substance use and mental health treatment, prevention and education outreach, and policy and advocacy work.

AIDS Alabama is deeply concerned about the proposed "verification of eligible status" changes and the negative impact these regulations will have on the wellbeing of people living with or disproportionately impacted by HIV. Like many of its Deep South neighbors, Alabama remains disproportionately impacted by the HIV epidemic. In 2016, Alabama had the 11th highest new HIV diagnosis rate among all states and the 11th highest new AIDS diagnosis rate.¹ For many individuals living with HIV, federal housing programs serve a vital role in helping them and their families maintain engagement in care. In a statewide needs assessment conducted recently by the University of Alabama at Birmingham (UAB) School of Public Health, stable housing was the

¹ Centers for Disease Control and Prevention, HIV Surveillance Report, 2017, HIV Surveillance Report, Vol. 29, <http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published November, 2018. Accessed January, 4th, 2019.

most commonly cited unmet supportive service need among respondents living with HIV,² and of the 14,042 Alabamians currently living with HIV,³ more than 3,000 receive housing assistance through the federal Housing Opportunities With AIDS (HOPWA) program alone.⁴

Though HUD's expressed desire to address the national housing crisis and reduce public housing waitlists is commendable, the proposed rule would fail to address the actual drivers behind housing shortages. Indeed, 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.⁵ Additionally, many of the families that would lose housing as a result of the proposed rule belong to communities that are disproportionately impacted by the HIV epidemic, including communities of color, LGBTQ individuals, and youth. The proposed "verification of eligible status" rule would ultimately result in tens of thousands of families losing safe, affordable housing and worsen public health outcomes for our nation's most vulnerable community members. For the reasons discussed in detail below, we strongly oppose the proposed changes regarding "verification of eligible status" and urge the rule to be withdrawn in its entirety.

I. The proposed rule would reduce health outcomes for people living with HIV and increase the rate of new transmissions.

Access to housing is an important precursor to getting many people living with HIV into a stable treatment regimen. Individuals living with HIV who lack stable housing are more likely to delay HIV care, have poorer access to regular care, are less likely to receive optimal antiretroviral therapy, and are less likely to adhere to therapy.⁶ As acknowledged by HUD, existing research definitively shows that access to housing for people living with HIV leads to improved health outcomes.⁷

² Alabama Department of Public Health, 2015 HIV/AIDS Needs Assessment (2016).

https://www.alabamapublichealth.gov/hiv/assets/HIVPreventionCareAndNeedsAssessment_2016.pdf.

³ Alabama Department of Public Health, HIV Cases Among Persons Residing in Alabama At Diagnosis By Public Health Area and County (January-December, 2017).

⁴ United States Department of Housing and Urban Development, Consolidated Annual Performance and Evaluation Report Measuring Performance Outcomes: State of Alabama (2015),

<http://adeca.alabama.gov/Divisions/ced/cdp/CDBG%20Documents/PY2016%20Alabama%20CAPER%20-%20HOPWA%20Program%20Report%20on%20HUD%20Form%2040110-D.docx>.

⁵ 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).

⁶ Office of National AIDS Policy, National HIV/AIDS Strategy for the United States: Updated to 2020 (2015), <https://www.aids.gov/federal-resources/national-hiv-aids-strategy/nhas-update.pdf>.

⁷ United States Department of Housing and Urban Development, HIV Care Continuum: The Connection Between Housing and Improved Outcomes Along the HIV Care Continuum (2014),

<https://www.hudexchange.info/resources/documents/The-Connection-Between-Housing-and-Improved-Outcomes-Along-the-HIV-Care-Continuum.pdf>.

Engagement in care not only improves the quality of life for people living with HIV, but is also critical to preventing new transmissions. As acknowledged by the NIH⁸ and the CDC,⁹ recent studies have demonstrated that when an individual living with HIV suppresses the virus to an undetectable level in their body through antiretroviral medications, they are effectively incapable of transmitting HIV. Early diagnosis of an HIV infection enables quicker viral suppression, yet the Centers for Disease Prevention and Control (CDC) estimates that roughly 1 in 7 Americans living with HIV are unaware of their status.¹⁰ Ensuring access to HIV testing and care among vulnerable populations is thus key to reducing new HIV transmissions and improving overall health outcomes for both those living with and at risk for HIV. Since each prevented HIV case is estimated to save \$435,200 in lifetime treatment costs,¹¹ reducing new transmissions also lowers public health costs.

Instead of removing barriers to safe, affordable housing for people living with HIV, however, the proposed rule would instead seek to revoke housing assistance for people living with HIV within mixed citizenship status families. Since 70% of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely that these families will forgo subsidies to avoid separation. This is an outcome that HUD notes in the department's regulatory impact analysis for the proposed rule, stating that "HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified."¹² 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.¹³

The disruption in stable housing for individuals living with HIV and their families that are impacted by the proposed rule will create additional barriers to engagement and adherence to care. This, in turn, will result in worse health outcomes and potentially loss of life for those living with HIV who fall out of care as a result. In addition, the resultant reduction in viral suppression will lead to more new transmissions of HIV. These impacts would hinder efforts to achieve the goals laid out by the historic new federal initiative to end the domestic HIV

⁸ Fauci, A. & Dieffenbach, C. (December, 2016). National Institutes for Health Statement on World AIDS Day for 2016. <https://www.nih.gov/news-events/news-releases/nih-statement-world-aids-day-2016>.

⁹ McCray, E., Mermin, J. (September, 2017). Centers for Disease Control and Prevention Dear Colleague Letter. <https://www.cdc.gov/hiv/library/dcl/dcl/092717.html>.

¹⁰ Centers for Disease Control and Prevention. HIV in the United States and Dependent Areas (May 9, 2019). <https://www.cdc.gov/hiv/statistics/overview/ataglance.html>.

¹¹ Schackman, B., et al., The Lifetime Medical Cost Savings from Preventing HIV in the United States, 53 MEDICAL CARE 293-301 (2015).

¹² 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).

¹³ Ibid.

epidemic by 2030,¹⁴ and could in fact roll back the progress that has been made in recent decades.

II. The proposed rule would reduce access to housing among communities that are disproportionately impacted by HIV.

The 2017 progress report for the National HIV/AIDS Strategy: Updated to 2020 acknowledges that though indicators demonstrate there's been important progress in reducing some HIV-related disparities, "they also show that progress has not been equal across all populations."¹⁵ In particular, the report noted increases in HIV-related disparities among communities of color, young people, LGBTQ-identified individuals¹⁶. Between 2011 and 2015, for example, the rate of new HIV diagnoses increased 19% among Hispanic/Latino gay and bisexual men ages 13 to 24,¹⁷ and new HIV diagnosis rates have risen among Asian American gay and bisexual men by 52% since 2010.¹⁸ What's more, homelessness among people living with HIV in medical care has also increased.¹⁹

The proposed rule would further exacerbate these disparities by disproportionately fueling structural drivers of the epidemic among many of these same communities. For example, the rule will significantly threaten the health of youth and young people by evicting more than 55,000 children who are eligible for the covered housing programs.²⁰ Mixed status families will have to make the excruciating decision to either face eviction or separate as a family in order to retain housing stability. Both options will have lasting impacts on child and family health. 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.²¹ The alternative, family separation, is a stressful and traumatizing

¹⁴ Azar, A. U.S. Department of Health and Human Services. U.S. Health and Human Services Blog, *Ending the HIV Epidemic: A Plan for America*. February 5, 2019. <https://www.hiv.gov/blog/ending-hiv-epidemic-plan-america>.

¹⁵ U.S. Department of Health and Human Services, Office of HIV/AIDS and Infectious Disease Policy. National HIV/AIDS Strategy for the United States: Updated to 2020, 2017 Progress Report (January 31, 2017). https://files.hiv.gov/s3fs-public/NHAS_Progress_Report_2017.pdf.

¹⁶ Ibid.

¹⁷ Centers for Disease Control and Prevention, Factsheet: HIV and Hispanics/Latinos (October, 2018). <https://www.cdc.gov/hiv/pdf/group/raciaethnic/hispaniclatinos/cdc-hiv-latinos.pdf>.

¹⁸ Centers for Disease Control and Prevention, Factsheet: HIV and Asians (May, 2019). <https://www.cdc.gov/hiv/pdf/group/raciaethnic/asians/cdc-hiv-asians.pdf>.

¹⁹ U.S. Department of Health and Human Services, Office of HIV/AIDS and Infectious Disease Policy. National HIV/AIDS Strategy for the United States: Updated to 2020, 2017 Progress Report (January 31, 2017). https://files.hiv.gov/s3fs-public/NHAS_Progress_Report_2017.pdf.

²⁰ 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).

²¹ 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).

experience for children, which can alter the architecture of a child’s developing brain and have lifelong consequences.²²

Approximately 18 million children in the U.S. live in a family with at least one immigrant parent,²³ 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.²⁴ 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.²⁵ 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 households currently receiving rental assistance include children.²⁶

The proposed rule would also disproportionately harm families of color, especially within Latino/Hispanic or Asian American/Pacific Islander communities. Today, the U.S. Latino population stands at more than 55 million, comprising 18 percent of the total U.S. population, and approximately one in five Latinos are non-citizens.²⁷ Among Latino children, who account for a quarter of all U.S. children, the majority (52 percent) have at least one immigrant parent,²⁸ and more than half of children of immigrants are Latino.²⁹ The Asian American Pacific Islander (AAPI) community is the fastest growing racial group in the United States, with more than 18 million U.S. residents identifying as AAPI.³⁰ Currently 59% of all AAPI residents in the U.S. were born in another country and an even greater share (73%) of AAPI adults are immigrants.³¹

²² Simha S., *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C Med J. 95, 96 (2019).

²³ Databank Indicator: Immigrant Children, Child Trends (Oct. 2014), www.childtrends.org/?indicators=immigrant-children.

²⁴ 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.

²⁵ *Ibid.*

²⁶ “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>.

²⁷ U.S. Census Bureau, *American FactFinder: Selected Population Profile in the United States: 2017 American Community Survey 1-Year Estimates*.

²⁸ Richard Fry and Jeffrey S. Passel “Latino Children: A Majority Are U.S.-Born Offspring of Immigrants” (Washington, DC: Pew Research Center, 2009) <https://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/>.

²⁹ Urban Institute “Part of Us: A Data-Driven Look at Children of Immigrants” (Washington, DC: The Urban Institute, March 2019) <https://www.urban.org/features/part-us-data-driven-look-children-immigrants>.

³⁰ ³⁰ U.S. Census Bureau, *American FactFinder: Selected Population Profile in the United States: 2017 American Community Survey 1-Year Estimates*.

³¹ Pew Research Center, *FactTank: Key facts about Asian Americans, a diverse and growing population* (September 8, 2017). <https://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/>.

In 2018, over a quarter of a million AAPIs received HUD subsidized housing assistance,³² and at least 10% of AAPI households are multi-generational homes.³³ In 2017, 4.4 million (55 percent) Latinos who rented their home were cost-burdened – meaning they devoted 30 percent or more of their income towards rent.³⁴ As HUD acknowledges, families that lose housing assistance are at risk of homelessness, with serious consequences for family well-being and child development. The impact of HUD’s proposed rule would thus be devastating for many Latino and AAPI families.

This proposed rule is also likely to have a profound impact on LGBTQ families. 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.³⁵ 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 need for these programs is especially acute for transgender people, LGBTQ people with disabilities, and LGBTQ people of color.³⁶

As detailed above, access to safe, affordable housing is a critical component to reducing new HIV transmissions and engaging people living with HIV in care. By disproportionately creating housing instability among youth, LGBTQ individuals, Latinos, Asian American/Pacific Islanders, and other communities disproportionately impacted by HIV, the proposed rule threatens to exacerbate HIV-related disparities. The consequences from implementing this rule would not only prevent achievement of the White House’s stated goal of reducing new HIV transmissions by 90% in 10 years, but would risk rolling back the important gains made thus far.

III. The proposed rule will create costly administrative burdens that further reduce access to quality housing.

In addition to the harmful impact of the proposed rule on vulnerable families, housing providers and landlords will be significantly burdened by new administrative regulations required under the rule. Tens of thousands of public housing agencies and private property owners and managers would need to collect documents “proving” the citizenship of over nine million assisted residents receiving HUD assistance who have already attested, under penalty of perjury, as well as the citizenship of future applicants for assistance. Housing providers would also need to collect status documentation from 120,000 elderly immigrants. Additionally, the

³² US Department of Housing and Urban Development, Picture of Subsidized Households, 2018.

³³ US Census, 2010 Decennial Census, SF2.

³⁴ UnidosUS “Latinos and the Great Recession: 10 Years of Economic Loss and Recovery” (Washington, DC: UnidosUS, March 2019) <http://publications.unidosus.org/handle/123456789/1932>.

³⁵ 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/>.

³⁶ 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/>.

proposed rule calls for public housing authorities to establish their own policies and criteria to determine whether a family should receive continued or temporary deferral of assistance.

All of these requirements will place a significant cost burden on housing authorities and other subsidized housing providers that are completely unaccounted for in the rule. Housing authorities, charged with administering the public housing and Housing Choice Voucher programs, have spoken out against the proposed rule. For example, the president of the Public Housing Authorities Directors Association (PHADA)—John Clarke—noted that “[r]emoving a family is not free. It takes staff time. It takes legal resources. Staff will have to sit in court instead of screening families or going over eligibility applications. It doesn’t seem like a quality way to maximize the slim resources we do have.”³⁷

Other anticipated costs for housing authorities and other subsidized housing providers would include:

- Formally evicting and terminating the assistance of thousands of mixed status families that HUD estimates would be \$4.4 million.³⁸
- Unit turnovers because of the chilling effect of this rule on eligible immigrant families who will forgo housing assistance.
- Fielding questions from tenants fearful about the implications of the proposed rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies.
- Updating forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance.

Many of these costs and burdens are not considered in the proposed rule and could deter housing providers from participating in these programs, ultimately reducing the supply of affordable housing even more as a result. Alabama, for example, already experiences a shortage of more than 69,000 affordable rental homes for extremely low income renters.³⁹ For every 100 Alabama families with incomes at or below the federal poverty line, there only 62 affordable and available homes.⁴⁰ When broken down across Alabama’s seven Congressional districts, that ratio drops to between 33 and 49 homes per 100 families experiencing poverty.⁴¹

³⁷ Matt Quinn, Public Housing Agencies Oppose HUD’s Plan to Evict Immigrant Families, *Governing* (May 21, 2019), <https://www.governing.com/topics/health-human-services/gov-hud-public-housing-immigrants-rule-hearing-congress.html>.

³⁸ 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 15 (Apr. 15, 2019).

³⁹ National Low Income Housing Coalition, 2019 Alabama Housing Profile (February 28, 2019), https://nlihc.org/sites/default/files/SHP_AL.pdf.

⁴⁰ *Ibid.*

⁴¹ National Low Income Housing Coalition, Alabama Congressional District Housing Profiles (November, 2018), https://nlihc.org/sites/default/files/CDP_AL.pdf

The additional burdensome administrative requirements that would result from implementing the proposed rule would further limit the availability of housing in states like Alabama, directly contradicting HUD's stated purpose for the rule change.

Conclusion

In sum, our agency has grave reservations regarding the proposed verification of eligible status rule. As stated above, the proposed rule would threaten housing stability for individuals living with or disproportionately impacted by HIV, worsening HIV-related health outcomes and contributing to increased new transmissions as a result. In addition, the rule would disproportionately reduce access to safe, affordable housing among communities that are already hardest hit by the HIV epidemic, including youth, communities of color (especially Latino and AAPI residents), and LGBTQ individuals. Finally, HUD failed to adequately consider the burdensome administrative costs that would be incurred by implementing the rule, which would likely exacerbate affordable housing shortages. We urge HUD to immediately withdraw its current proposal and instead work with Congress and the White House to make significant new investments in housing assistance programs so that all families have access to a safe, affordable place to call home.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please contact Matt Pagnotti, Director of Policy and Advocacy for AIDS Alabama, at matthew.pagnotti@aidsalabama.org with any questions.