

July 8, 2019
Office of General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

**SUBJECT: Comments in Response to Proposed Rulemaking:
HUD Docket No. FR-6124-P-01, RIN 2501-AD89
Housing and Community Development Act of 1980: Verification of Eligible Status**

Dear Madam/Sir:

CommonSpirit Health is grateful for the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule 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). CommonSpirit Health is a non-profit, Catholic health system dedicated to creating healthier communities, delivering exceptional patient care, and ensuring every person has access to quality health care. **Committed to our healing mission, CommonSpirit Health opposes the proposed rule, urges the rule to be withdrawn in its entirety, and supports HUD's long-standing regulations to remain in effect.**

Addressing root causes of the negative impacts of social determinants of health (SDoH), such as housing insecurity and homelessness, reflect not only our values but who we are as a healing mission. A stable place to live supports the health of all people across the life course, as well as the social and economic vitality of communities. For this reason, CommonSpirit Health has dedicated millions of our investment and community benefit dollars to increasing the housing pools in the various communities we serve, especially in low-income and high-need neighborhoods. We see housing as a prescription for health.

CommonSpirit Health also sees comprehensive reform of our immigration system as a priority for the well-being of our nation. We know that the ongoing housing crisis and escalating immigration issues require meaningful solutions not scapegoats for the problem. In the various communities we serve, CommonSpirit Health bears witness to the suffering of those most vulnerable—of the sick, those who are poor and vulnerable, children and families (both separated and at the risk of being torn apart) in the crosshairs of injustice and inhumanity. By mission and by law, we care for all people who present at our emergency departments—regardless of ability to pay, housing and/or immigration status. We know our efforts alone are not enough. In our great nation, we believe more can be done to further health and healing for all. It begins with an affordable place to call home. Currently, people who are not U.S. citizens and immigrants with certain immigration statuses are ineligible for housing assistance. If a household includes some eligible and some ineligible people, assistance is prorated to only cover citizens and eligible immigrants. The proposed rule imposes new documentation requirements on all citizens and eligible noncitizens over 62 and bars families from getting rental assistance if at least one person in the household is not eligible for assistance because of their immigration status. This proposed rule will not only make it more challenging for healthcare to sustain its healing mission but will also exacerbate and confound the critical issues our nation faces. CommonSpirit Health has grave concerns regarding the proposed rule. It is flawed and stands in tension with values that uphold the dignity of the person, the well-being of family, and the common good.

I. The Proposed Rule Conflicts with Section 214 and Subsequent Amendments

Stated in the notice of proposed rulemaking (NPRM), the proposed amendments will bring HUD's regulations "into greater alignment" with the requirements of underlying statute, Section 214 of the Housing and Community Development Act of 1980. Section 214 is clear about who can and cannot receive financial assistance while also unambiguously recognizing mixed-status households' eligibility to partake in HUD programs. The plain language of the statute conveys this. It states:

If the eligibility for financial assistance *of at least one member* of a family has been affirmatively established under the program of financial assistance and 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**, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family...."¹

The law explicitly permits housing authorities to choose not to affirmatively establish ineligibility.² 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 full subsidy prior to the statute's passage could avoid family breakup.³ 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 1996.⁴ Congress has been consistent in attempting to guarantee that scarce federal subsidy 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. The proposed rule is misaligned with Section 214 and is simply bad policy that would take our nation backwards. **Recognizing the enormity of the housing crisis in many of the communities we serve, CommonSpirit Health envisions our nation moving forward to address the root causes of poverty and lack of affordable housing supply. It is evident in this case that history is on the side of doing more and doing better *for, not against*, families. This proposed rule is an affront to the mother, father and child, in and among us. HUD must and can do better.**

II. The Propose Rule Undermines HUD Goal of Promoting a Fair and Inclusive Housing Market

HUD's own Regulatory Impact Analysis provides self-recognized negative impacts of the rule, including: 1) children and families losing their home and potentially becoming homeless; 2) a reduction in the quantity of housing assistance and decrease in the quality of housing stock; and 3) an increase in administrative costs.⁵ These detrimental effects on housing programs run contrary to the purpose of enacted housing policies. In addition, the consequences of the proposed rule are unacceptable in how they endanger access to important programs for vulnerable communities, including low-income housing recipients and children in these families.

¹ Housing and Community Development Act of 1980, 42 U.S.C. § 1436(b)(2) (emphasis added).

² *Id.*, 42 U.S.C. § 1436a(i)(2)(A).

³ Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

⁴ Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

⁵ HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1908*, Docket No. FR-6124-P-01.

The proposed rule is also in direct conflict with HUD's current mission statement. The agency is purportedly working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination, and transform the way HUD does business.⁶ Yet, this proposed rule will undermine families' ability to access affordable housing and maintain their quality of life. As the principal federal agency responsible for programs addressing housing needs, fair housing opportunities, and improvement and development of U.S. communities, HUD has a responsibility to ensure everyone has access to "fair and equal" housing.

Explaining his belief in the need for this proposed change, Secretary Carson said, "Given the overwhelming demand for our programs, fairness requires that we devote ourselves to legal residents who have been waiting, some for many years, for access to affordable housing."⁷ His statement demonstrates an understanding of the struggles to afford decent housing and of the need for more housing assistance. Among low-income renters, only 21% receive assistance, leaving the vast majority to experiencing hardship to make ends meet, risking housing instability and homelessness.⁸ **While CommonSpirit Health wholeheartedly supports the intent to reduce long waiting lists for housing assistance, we do not support reducing these waiting lists at the expense of mixed-status families. Ultimately, this approach will not give more people access to affordable housing. Violating a moral obligation to care for poor and vulnerable people is antithetical to "fair and inclusive." More should be done to address the housing needs of everyone in this country, but it must not be done by forcing mixed-status families out of stable housing.**

III. The Proposed Rule Will Hurt Children and Families

According to HUD's own analysis, an estimated 25,000 households currently receiving assistance are mixed-status and will be negatively impacted by this rule, despite the fact that the vast majority of these families' members—an estimated 71%—are otherwise eligible for assistance.⁹ Adverse impacts would be disproportionately felt by children in these mixed-status families,¹⁰ including an estimated 55,000 children who are U.S. citizens, lawful permanent residents, or otherwise eligible for assistance.¹¹ Moreover, because Section 214 limits access to federally subsidized housing programs to U.S. citizens and a narrow list of noncitizens, there are a number of noncitizens with legal status who are ineligible for the program.¹² This means that the proposed rule would have impacts beyond families with undocumented members. It would also affect families with noncitizen members not specifically listed in Section 214, such as individuals with Deferred Action for Childhood Arrivals (DACA) or U nonimmigrant status.

If implemented, the proposed rule will require these families to make a heartbreaking choice—endure family separation so that eligible members could continue to qualify for critical subsidized housing programs or stay together and forfeit any housing assistance. This is a choice no family should be forced to make. In its own

⁶ *Mission*, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (June 24, 2019), available at <https://hud.gov/about/mission>.

⁷ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants from Public Housing*, THE WASHINGTON POST (APRIL 18, 2019), available at https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.c6fd40565b83.

⁸ G. THOMAS KINGSLEY, URBAN INSTITUTE, TRENDS IN HOUSING PROBLEMS AND FEDERAL HOUSING ASSISTANCE, 14 (2017), available at <https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf>.

⁹ HUD Regulatory Impact Analysis, *supra* note 5.

¹⁰ *Id.* at 9 (noting that 73 percent of eligible individuals in mixed-status families are children).

¹¹ *Id.* at 9.

¹² 42 U.S.C. § 1436(a).

analysis, “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”¹³

Family separation is inhumane and contrary to human dignity. Family separation can cause irreparable harm to children, as separation often causes trauma and can lead to toxic stress. There has been extensive research exploring the short- and long-term effects of trauma and toxic stress on children, including analyses of the effects of Adverse Childhood Experiences (ACEs),¹⁴ such as family separation.¹⁵ Researchers have found that the impact of trauma can be compounded and that children can experience the effects of trauma long-term across various domains in their lives (education, physical health, mental health, relationally, etc).¹⁶ For instance, young children who experience toxic stress have higher rates of cardiovascular disease, cancer, and depression later in life.¹⁷ Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students’ high suspension rates, school turnover, truancy, and expulsions, limiting students’ opportunity to obtain the education they need to succeed later in life.¹⁸

In every CommonSpirit Health hospital and outside our walls in the diverse communities we serve, we see the faces of children from different socio-economic and ethnic backgrounds, in all shades, shapes and sizes, in all that they are, anywhere in the spectrum of poor to poorest health. We are called to protect the dignity of each of them, doing our part to heal their broken bodies and lift up their spirits, yet it is the children that give the greatest of gifts—the gift of hope and the possibilities of a brighter future for our nation, our world. To come to the aid of the poorest and most vulnerable of these children and their families speak volume about our commitment to healing and how our nation sees healthcare. **Caring for the poor does not mean advocating for poor care and policies that lead to poorer health. This proposed rule will harm children and families, undermining what healthcare stands for and unraveling the work CommonSpirit Health does day in and day out to build healthier communities. It will only perpetuate “sick care.” What will become of healthcare’s ability to steward its resources to meet growing demands within a regulatory environment such as this?**

IV. The Proposed Rule Will Have Unintended Consequences for Citizens, Seniors and Vulnerable Populations

In addition to the negative effects of the proposed rule outlined above, we foresee unintended consequences due to the documentation requirements for seniors and U.S citizens. Currently, to establish eligibility for Section 214 housing assistance, U.S. citizens need to provide a declaration signed under penalty of perjury of their citizenship or nationality status. Under the proposed rule will be required to provide documentary proof of citizenship or nationality, such as a birth certificate, which can be extremely difficult for certain segments of the population. One survey from 2006 showed that as many as seven percent of citizens did not have documents readily available that can prove their citizenship.¹⁹ This number is likely to be higher among those receiving

¹³ 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).

¹⁴ A set of traumatic experiences that a child is either exposed to or witnesses (e.g., abuse, neglect household dysfunction, etc).

¹⁵ Jordan P. Davis, Tara M. Dumas & Brent W. Roberts, *Adverse Childhood Experiences and Development in Emerging Adulthood*, 6 EMERGING ADULTHOOD 223, 223-234 (2017).

¹⁶ Sara B. Johnson, Anne W. Riley, Douglas A. Granger, & Jenna Riis, *The Science of Early Life Toxic Stress for Pediatric Practice and Advocacy*, 231 PEDIATRICS 319, 319-327 (2013)

¹⁷ Sara B. Johnson, et al, *supra* note 16.

¹⁸ 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).

¹⁹ 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

housing assistance in Section 214 programs because low-income individuals are less likely to have documentation than those with higher incomes. Twelve percent of U.S. citizens earning less than \$25,000 per year are not able to easily produce a U.S. birth certificate, a naturalization certificate, or a valid unexpired U.S. passport.²⁰ The risk of an eligible U.S. citizen or senior not being able to produce the proper documentation and therefore not being able to maintain their housing assistance is higher for the most vulnerable. For example, if they already lack the necessary documentation, seniors and people with disabilities may not be able to obtain it because of decreased mobility. People who are homeless or formerly homeless may have lost important documents if they did not have a safe place to store their belongings while they experienced homelessness. The new documentation requirements add administrative barriers which could cause more eligible recipients of housing assistance to experience housing instability. There is a distinction between the necessity for appropriate documentation requirements and this proposed rule which would establish an exclusionary mechanism for mixed-status families. **CommonSpirit Health is deeply concerned how far reaching the harm this rule will cause eligible individuals—citizens, seniors and vulnerable populations alike, all those for whom this housing assistance was designed to aid.**

V. The Proposed Rule Will Increase Homelessness, Undermine Efforts to Address Housing Instability , and Cause the Quality and Quantity of Assisted Housing to Decrease

As individuals and families are forced to forego the housing assistance they currently receive, they may not be able to find affordable housing on their own. Straining their budgets to pay rent each month will have consequences—housing instability and even homelessness. The mixed-status families affected by this rule disproportionately live in states which contain three of the four metro areas—New York, Los Angeles and San Francisco—with the highest rates of homelessness and where homelessness continues to increase.²¹ Homeless services in these metro areas are already strained. An increase in new families and individuals needing support without providing additional resources for these services is unsustainable. The cost of addressing homelessness, especially for families, is high. An emergency shelter program costs about \$4,800 per month, per family. Meanwhile, programs which provide a permanent housing subsidy, such as Section 214 programs, cost about \$1,200 per month per family.²²

Providing emergency homeless services is an expensive way to address housing instability. It is also less effective than homelessness prevention efforts. While an effective approach to homelessness exists through the Housing First model, it is easier to make an impact on reducing homelessness through prevention efforts.²³ Homelessness has a lasting impact and has the potential for a great number of negative consequences that must be prevented whenever possible.²⁴ Permanent housing subsidies are more impactful than other homelessness

²⁰ BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (NOV.2006), available at http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

²¹ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING FOR 2018, 34 (2018), available at https://www/jchs.harvard.edu/sites/default/files/Harvard+JCHS_State_of_the_Nations_Housing_2018.pdf.

²² Daniel Gubits, et al, U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Family Options Study: 3-Year Impacts of Housing and Services Interventions for Homeless Families*, xxxi (October 2016), available at https://www.huduser.gov/portal/sites/default/files/pdf/family_Options-Study-Full-Report.pdf

²³ Patrick J. Fowler, et al, *Solving Homelessness from a Complex Systems Perspective: Insights for Prevention Responses*, 40 ANNUAL REVIEW OF PUBLIC HEALTH 465, 477 (2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6445694/pdf/nihms-1014367.pdf>.

²⁴ Martha R. Burt, et al, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF POLICY DEVELOPMENT AND RESEARCH, STRATEGIES FOR PREVENTING HOMELESSNESS, XI (May 2005), available at https://www.huduser.gov/Publications/pdf/Strategies_for_Preventing_Homelessness.pdf.

interventions for families.²⁵ It is both economically and morally worthwhile to prevent homelessness by investing in families through housing assistance. Allowing mixed-status families to remain in their homes with their housing assistance intact would go a long way to make the best use of HUD's limited resources and preserve homelessness services for those for whom prevention is no longer an option.

Moreover, the proposed rule will have real economic costs, harming current and future low-income renters in need of assistance. In fact, transferring assistance from the current 25,000 mixed-status families to families with only eligible members will cost HUD over \$370 million annually, according to its own estimates.²⁶ It is unlikely that HUD will receive additional allocations from Congress to cover this expense. As HUD's own analysis states: "Housing assistance is not an entitlement and the federal budget for housing is not expected to increase because of this rule."²⁷ Therefore the quantity of housing vouchers will be decreased and the quality of service at public housing complexes will be reduced to cover the increased cost of the proposed rule. Again, HUD's own analysis acknowledges this consequence of the proposed rule and likely outcome.²⁸

CommonSpirit Health recognizes that government alone cannot solve the housing crisis. We are committed to partnering with various stakeholders to successfully advance meaningful solutions to tackle this most pressing social determinant of health. However, this will be a losing proposition, if not impossible, if this proposed rule is finalized.

VI. Conclusion

At the heart of who we are, we believe housing is more than a market commodity; it is a basic social good.²⁹ Rooted in this conviction, CommonSpirit Health works to protect the human dignity of every person. And recognizes housing as an essential need and right of all. We believe that HUD must not neglect its responsibility to serve the poor and vulnerable and ensure that safe, decent, and affordable housing is available to mixed-status family. Denying subsidies to eligible individuals because of their membership in a mixed-status family is not only morally wrong, it is also concerning from a fiscal perspective and is in conflict with the underlying statute. The rule will have grave consequences for families, vulnerable communities, and the organizations that serve them. CommonSpirit Health believes the proposed rule is unacceptable, and we urge HUD to withdraw this deeply flawed proposed rule.

On behalf of CommonSpirit Health, thank you for the opportunity to submit comments. Please contact me with questions you may have at Shelly.Schlenker@CommonSpiritHealth.org or 916.851.2006 or Rachelle Wenger, System Vice President of Public Policy & Advocacy Engagement at Rachelle.Wenger@CommonSpiritHealth.org or 626.744.2209.

Sincerely,



Shelly L. Schlenker
System Senior Vice President, Public Policy, Advocacy and Government Relations

²⁵ Daniel Gubits, et al, *supra* note 22.

²⁶ HUD Regulatory Impact Analysis, *supra* note 5 at 11-12.

²⁷ HUD Regulatory Impact Analysis, *supra* note 5 at 13.

²⁸ *Id* at 13.

²⁹ *What Have You Done to Your Homeless Brother?: The Church and the Housing Problem*, Document of the Pontifical Commission "Justitia et Pax" on the Occasion of the International Year of Shelter for the Homeless, no.2.3 (December 27, 1987).