

July 8, 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

To Whom it May Concern:

We write on behalf of the American Civil Liberties Union of Washington (“ACLU-WA”) in response to the Department of Housing and Urban Development’s (“HUD”) Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status (hereinafter “Proposed Rule”), which was published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). The Proposed Rule will harm immigrant families, including U.S. citizens, and expose 55,000 children to eviction and homelessness. We urge HUD to withdraw the Proposed Rule in its entirety, and to leave intact its long-standing regulations establishing housing access for mixed-status families on a prorated basis.

The ACLU-WA is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters that is dedicated to the preservation and defense of constitutional and civil liberties. It has particular interest and expertise in the areas of immigration rights and economic justice. The ACLU-WA seeks to expand and enforce the civil rights of immigrants, to disrupt Washington State’s participation in federal immigration enforcement and deportation, and limit ICE/CBP’s footprint in Washington. Our work is animated by the principle that the fundamental constitutional protections of due process and equal protection apply to every person, regardless of immigration status.

The ACLU-WA opposes the Proposed Rule which represents an ongoing and coordinated attack on immigrant families without increasing access to HUD-supported housing.¹ The Proposed Rule

¹ See, e.g., *Understanding Trump’s Muslim Bans*, National Immigration Law Center (updated Mar. 8, 2019), available at <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgartner, “Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid,” *New York Times* (Sept. 22, 2018), available at <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,” *The Washington Post* (May 10, 2019), available at 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,” *New York Times* (May 3, 2019), available at <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

would force mixed-status families² to make an impossible choice: keep their families together (and therefore face eviction), or separate so that those with eligible status can keep much-needed subsidized housing.³ Recent studies show that there are approximately 980,158 immigrants in Washington state, 250,000 of whom are undocumented, and 351,016 of whom live with at least one undocumented family member.⁴ According to the Center for American Progress, Washington is ranked tenth in the nation for states with the most mixed-status households and tenth in the nation for states with the highest rates of U.S.-born individuals that will be most affected by this Proposed Rule.⁵ Based on this data, the ACLU-WA is concerned that the Proposed Rule will have a disproportionate impact on our community in Washington state, tearing families apart.

Furthermore, the Proposed Rule imposes new and burdensome requirements to prove citizenship or eligible immigration status, which will be daunting for many citizens and Legal Permanent Residents (LPRs). The mass evictions and onerous documentation requirements required by the Proposed Rule will have a disparate impact on Latinx⁶ families, elders, children, and people with disabilities.⁷ The Proposed Rule fails to consider that often, states with highest immigrant populations are also states with high housing costs. Specifically, one in seven people in Washington is an immigrant,⁸ and Washington is ranked tenth in the nation for the states with the strongest economic impact by immigrants.⁹ Yet, according to a city of Seattle survey, the top need for immigrants residing in Seattle and King County is access to affordable housing.¹⁰ HUD's own analysis confirms that the Proposed Rule will hurt mixed-status families, and that its implementation will cost so much that fewer families overall will receive housing assistance as a result.¹¹ Blaming struggling immigrant families for the ongoing nationwide housing affordability crisis is unfair and will only exacerbate this problem by increasing housing instability and reducing the amount and availability of federally assisted housing.

² Mixed status families are U.S. citizens or immigrants with lawful immigration status as well as one or more family members who lack lawful immigration status.

³ HUD's own regulatory analysis acknowledges that the Proposed Rule forces a "ruthless" choice for mixed-status families between compliance with the rule and keeping their families together. HUD, Regulatory Impact Analysis, *Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01, 16 (Apr. 15, 2019) (hereinafter "HUD Regulatory Impact Analysis").

⁴ American Immigration Council, *Immigrants in Washington* (Oct. 4, 2017), available at <https://www.americanimmigrationcouncil.org/research/immigrants-in-washington> (hereinafter "American Immigration Council").

⁵ Center for American Progress, *Keeping Families Together* (2010-2014), available at <https://www.americanprogress.org/issues/immigration/reports/2017/03/16/428335/keeping-families-together/>

⁶ We use "Latinx" as a gender-neutral alternative to Latina(s) and Latino(s).

⁷ Center on Budget and Policy Priorities, *Trump Proposal Would Force 25,000 Families to Split Up or Lose Rental Assistance* (Jun. 27, 2019), available at <https://www.cbpp.org/blog/trump-proposal-would-force-25000-families-to-split-up-or-lose-rental-assistance>.

⁸ See, Governor Jay Inslee, Executive Order 17-01, https://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf.

⁹ Wallethub, *Economic Impact of Immigration by State* (Jan. 29, 2019), available at <https://wallethub.com/edu/economic-impact-of-immigration-by-state/32248/>.

¹⁰ Seattle Office of Immigrant and Refugee Affairs, *2016 Survey Results: Immigrant Civic Engagement in Seattle-King County* (2016), available at <https://www.documentcloud.org/documents/4489464-2018-OIRA-SeattleSurveys-Reports-LatinoDecisions.html>.

¹¹ HUD, Regulatory Impact Analysis, *supra* note 3, at 3.

Currently, 103,000 households in Washington depend on federal rental assistance to afford modest housing, 72% of whom are elders, children, and people with disabilities.¹² Washington is ranked eighth in the nation amongst the states with the highest rent costs and fifth for the highest rates of homelessness,¹³ and many families displaced by this Proposed Rule will face severe housing precarity or homelessness. In fact, on a single night in 2018, more than 22,300 individuals experienced homelessness in Washington.¹⁴ By threatening access to stable, affordable housing, the Proposed Rule will undermine the well-being of low-income U.S. citizens, eligible immigrants, and their families, who are already struggling in a system fraught with institutional barriers. Rather than perpetuating housing inequities through this Proposed Rule, HUD should instead focus on securing funding to ensure that every family has access to one of the most basic of human rights—a safe, affordable place to call home.

In effect, the Proposed Rule is primarily an attack on children. In Washington, 35,510 children currently live in unstable housing.¹⁵ By eliminating the ability of mixed-status families to receive prorated assistance on a permanent basis, the Proposed Rule robs eligible children of housing subsidies solely because their parents lack eligible noncitizen 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.¹⁶ 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. This indicates that the Proposed Rule forecloses U.S. citizen and LPR children from receiving any housing assistance under the covered housing programs, unlawfully discriminating against them based on their parentage.

Furthermore, the Proposed Rule conflicts with statutory law. The Proposed Rule claims that it brings HUD regulations “into greater alignment with the wording and purpose of Section 214” by barring mixed-status families from receiving assistance. However, the plain language of Section 214 establishes that housing assistance must be made available to mixed-status families on a prorated basis as long as one member of the family is eligible:

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

¹² Center on Budget and Policy Priorities, *Washington Federal Rental Assistance Fact Sheet* (May 14, 2019), available at <https://apps.cbpp.org/4-3-19hours/PDF/4-3-19hours-factsheet-wa.pdf> (hereinafter “WA Federal Rental Assistance”).

¹³ Department of Commerce, *Homelessness in Washington State* (Dec. 2018), available at <http://www.commerce.wa.gov/wp-content/uploads/2013/01/COMMERCE-Homelessness-2018.pdf>.

¹⁴ WA Federal Rental Assistance, *see supra*, note 11.

¹⁵ *Id.*

¹⁶ *See* HUD, *Regulatory Impact Analysis*, *supra* note 3, at 6-8 (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).

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.

42 U.S.C. § 1436a(b)(2) (emphasis added). This subsection was added to Section 214 by Section 572 of the Use of Assisted Housing by Aliens Act of 1996, which was entitled “Sec. 572 Prorating of Financial Assistance,” and directly authorizes prorated financial assistance to mixed-status families. *See* Pub. L. 104-208, Div. C, Title V, § 572, Sept. 30, 1996. The subsection permits any “one member of a family” to possess eligible status and does not require that the eligible family member to be the head of the household. The Proposed Rule cherry-picks language to present an incomplete and misleading version of the statute and should therefore be withdrawn.

Immigrants have been the backbone of this nation for centuries and continue to provide for the benefit of all Americans in so many ways. The repeated attacks from this administration, including HUD’s Proposed Rule, are unwarranted, hateful, and unjustified. The Proposed Rule seeks to push both immigrants and U.S. citizens in mixed-status families to the fringes of society or worse, to self-deport. The Proposed Rule will hurt mixed-status families (including many U.S. citizens and eligible immigrants), exacerbates homelessness and poverty, is a direct attack on children, and is in direct conflict with Section 214. We urge HUD immediately to withdraw the Proposed Rule and instead to advance housing policies that strengthen—not undermine—the ability of families to remain together in stable, affordable housing.

Please do not hesitate to contact me to provide further information.

Sincerely,

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