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Regulations Division, Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th Street S.W., 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

Agency/Docket Number: Notice 2019-09566; 84 Fed. Reg. 84 FR 20589

Dear Sir or Madam:

The Center on Race, Inequality, and the Law, at New York University School of Law is an interdisciplinary institute created to confront laws, policies, and practices that lead to the oppression and marginalization of people of color. The Center submits these comments in response to the Department of Housing and Urban Development's ("HUD") proposal to amend Section 214 of the Housing and Community Development Act of 1980, a measure that would no longer grant financial assistance to persons other than United States citizens or certain categories of specified eligible noncitizens in HUD's public and specified assisted housing programs. The amendment includes the denial of public assistance to mixed-status families, and a requirement for United States citizens to provide proof of citizenship in order to obtain assistance.

The Center is particularly concerned with the proposed amendment to Section 214 due to our active involvement in addressing the disproportionate, harmful impact

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that laws can have on communities of color. America's immigrant population is overwhelmingly comprised of people of color. According to the Migration Policy Institute, 44 percent of U.S. immigrants (19.7 million people) identify as Hispanic or Latinx,¹ 27 percent of U.S. immigrants identify as Asian, and 9 percent identify as Black.² In addition to the harms to immigrant communities, the proposed amendment will also cause great harm to U.S. citizens of color.

Secretary Carson explicitly stated that the purpose of the proposed rule is to "take care of your own first."³ This statement condones and endorses the disparaging, xenophobic attitudes that undergird the current administration's attitudes and policies toward immigrant communities of color. Fundamentally, by using immigration status as a dividing line, the proposed amendment contributes to an already thriving narrative of hostility and contempt toward immigrants.

The proposed rule will cause significant harm to already marginalized groups, including children and low-income communities of color, violating their human right to housing and exacerbating racial discrimination and segregation. We therefore strongly condemn the proposed rule and urge the HUD to withdraw the amendment in light of the following considerations.

1. The Proposed Rule Will Harm Thousands of Children of Color

HUD's own analysis of the effect of the proposed rule underscores the serious harm that it will visit on immigrant families of color, and in particular, the children of those families.⁴ Critically, 70 percent of mixed status families that currently receive HUD assistance comprise eligible children and at least one ineligible parent.⁵ HUD's report stated, "HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households..."⁶ HUD anticipates that the

¹ Jie Zong et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (March 14, 2019), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

² *Id.*

³ Sylvan Lane, *Carson on HUD Eviction Plan: You Take Care of Your Own First*, THE HILL, (May 21, 2019) <https://thehill.com/policy/finance/444791-dems-rip-carson-for-proposal-to-evict-undocumented-immigrants-from-public>

⁴ One out of every four children in the U.S. has at least one immigrant parent, and most have at least one parent who is a U.S. citizen. *Part of Us: A Data-Driven Look at Children of Immigrants*, Urb. Inst. (March 14, 2019), <https://www.urban.org/features/part-us-data-driven-look-children-immigrants>.

⁵ Sara Boboltz, *About 55,000 Children Could Be Made Homeless Under New HUD Rule*, HUFFINGTON POST (May 10, 2019, 6:04 PM), https://www.huffpost.com/entry/55000-children-could-be-displaced-under-new-low-income-housing-rule_n_5cd57f6ce4b054da4e87dd4c.

⁶ DEP'T OF HOUSING & URB. DEV., 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).

rule would effectively evict as many as 108,000 individuals in mixed status families (in which nearly three out of four are eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule.⁷ Among those effectively evicted by the proposed rule are 55,000 children with legal documentation, many of whom are U.S. citizens.⁸ By forcing immigrant families to make the untenable choice between separating to ensure the remaining family members are still eligible for assistance, or to forgo receiving assistance all together, HUD is sure to foster increased rates of homelessness and unstable housing conditions among an already vulnerable population.⁹

Such a result is unacceptable given what we know about the experiences of immigrant families. According to the National Center for Children in Poverty “Immigrant families are disproportionately likely to experience poverty and other hardships that can place children at risk, and research points to significant gaps in meeting their needs.”¹⁰ Children of immigrants are more likely to live in low-income families than native-born children.¹¹ It follows therefore that the effects of the proposed rule will have the greatest and most severe impact upon children in immigrant families, who as noted, are more likely to be children of color.

The importance of a stable environment for children cannot be understated. Research has shown that economic and housing instability impedes children’s cognitive development, leading to poorer life outcomes as adults.¹² Should families choose to separate, the instability and uncertainty that follows in family relationships can lead to extreme psychological distress and anxiety which can remain with them for the rest of their lives.¹³ For children displaced by the new rule, housing instability can be the catalyst for wider concerns including disruptions in social ties and

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Confronting the Housing Squeeze: Challenges Facing Immigrant Tenants and What New York Can Do*, PRATT CENT. RES. (Oct. 16, 2008), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

¹⁰ NAT’L CENT. CHILD. POVERTY, <http://www.nccp.org/topics/immigrantfamilies.html> (last visited June 27, 2019).

¹¹ *Part of Us: A Data-Driven Look at Children of Immigrants*, URB. INST. (March 14, 2019), <https://www.urban.org/features/part-us-data-driven-look-children-immigrants>

¹² See Heather Sandstrom et al., *The Negative Effects of Instability on Child Development: A Research Synthesis*, Urb. Inst. (September 2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-ChildDevelopment-A-Research-Synthesis.PDF>.

¹³ Jim Sliwa, *Proposed HUD Rule Could Lead to Hundreds of Thousands of Homeless, Says APA*, AM. PSYCHOL. ASS’N (May 21, 2019), <https://www.apa.org/news/press/releases/2019/05/hud-rule-homeless>.

community resources, adverse effects on education, and on mental and physical health.¹⁴

Extraordinarily, HUD claims that by implementing the proposed rule “[they] are putting America’s most vulnerable first.”¹⁵ In light of the estimated harms that the proposed amendment will produce, it is clear that HUD is in fact *targeting* America’s most vulnerable first. It is clear therefore that the HUD’s proposal is deliberately intended to do severe harm to the most vulnerable communities of color in our society.

2. The Proposed Rule Encourages Racial Discrimination and Will Disproportionately Impact Communities of Color

In recent years, many of the laws and policies instituted by the current administration have overwhelmingly targeted Latinx immigrant populations.¹⁶ Similarly, the proposed public housing rule will have a disproportionate impact upon Latinx immigrant households. Approximately 85 percent of individuals in mixed status households identify as Latinx.¹⁷ Latinx households will suffer a clear and adverse impact as a result of the proposed rule.

While the proposed rule is primarily intended to target immigrant communities of color, U.S. citizens of color will also suffer by virtue of its implementation. The proposed rule requires that all those who receive housing assistance must provide evidence of their citizenship, creating an additional burden

¹⁴ David Figlio et al., *Do Children Lose More than a Home? The Effects of Foreclosure on Children’s Education Outcomes*, RES. GATE, https://www.researchgate.net/publication/238739330_Do_Children_Lose_More_than_a_Home_The_Effects_of_Foreclosure_on_Children's_Education_Outcomes.

¹⁵ Tanvi Misra, *HUD Is Proposing A New Restriction On Housing Assistance. It Could Cost Thousands of Kids Their Homes*, PAC. STANDARD (May 15, 2019), <https://psmag.com/social-justice/a-new-hud-rule-could-make-thousands-of-kids-homeless>.

¹⁶ Indeed, many of these policies including for example the proposed public charge rule, and the attempts to revoke DACA, use immigration status as a proxy for race, legalizing the discrimination against individuals based upon race and national origin through the use of facially neutral policies and laws that overwhelmingly target immigrant populations of color (See CECILIA MENJIVAR ET AL., *IMMIGRANT FAMILIES*, (1st ed. 2016)). In the housing context, the law under The Fair Housing Act (“FHA”), 42 U.S.C. § 3601, prohibits the denial of or otherwise making housing unavailable on the basis of race, color, national origin or familial status.¹⁶ In addition, the Supreme Court has found that a facially neutral policy or practice that adversely disparately impacts members of a protected category is actionable under the FHA. See *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2525 (2015). HUD’s proposed rule likely contravenes the FHA and the Supreme Court’s decision in *Inclusive Communities*.

¹⁷ See NATIONAL HOUSING LAW PROJECT, et al., *HUD’s Proposed Rule on Mixed Status Families*, 26 (June 5, 2019) available at <https://www.nhlp.org/wp-content/uploads/KeepFamiliesTogether-Webinar-06052019.pdf> (last visited June 17, 2019).

for approximately 9.5 million current and future U.S. citizens who, at present, receive HUD assistance. Providing evidence of citizenship can be particularly challenging for certain groups. A report by the Brennan Center for Justice found that millions of American citizens do not have readily available documentary proof of citizenship and that citizens with low incomes were twice as likely to lack documentation proving their citizenship, compared to those who earned more than \$25,000 per annum.¹⁸

Significantly, 48% of African Americans could be impacted by HUD's proposed requirement for U.S. citizens to provide documentation, a significant majority when compared to other racial groups.¹⁹ Indeed in the context of voting rights, proof-of-citizenship laws have already been found to disproportionately affect communities of color including Native Americans, African Americans, and members of other historically disadvantaged groups who are less likely to have access to documents that will satisfy these demands.²⁰

The requirement to provide proof of citizenship will also negatively impact U.S. citizens who receive rental assistance and were formerly homeless, as well as those who are currently experiencing homelessness who could be assisted by Section 214 programs in the future.²¹ In a survey provided by the National Law Center on Homelessness and Poverty in a given month, 54 percent of homeless people without photo ID were denied access to shelters or housing services.²² This is particularly significant for people of color as recent trends demonstrate growing racial disparities among the homeless. African Americans make up 40 percent of the homeless population despite only representing 13 percent of the general population.

For many members of these groups, proving citizenship with required documentation such as birth certificates and passports can be a difficult and challenging burden. Obtaining such documentation is costly, time-consuming, and can sometimes require travelling significant distances to the location of birth. Such barriers will undoubtedly prevent a significant majority of low-income U.S. citizens of color from obtaining the required documentation, leading to their denial of essential assistance. Indeed, the requirement to provide proof of citizenship

¹⁸ *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, BRENNAN CENT. JUST. (Nov. 2016),

https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf

¹⁹ National Housing Law Project *supra* note 16, at 27.

²⁰ Stuart Naifeh, *How Do Proof-of-Citizenship Laws Block Legitimate Voters?*, DEMOS,

<https://www.demos.org/research/how-do-proof-citizenship-laws-block-legitimate-voters>

²¹ *See Racial Inequality*, NAT'L ALLIANCE END HOMELESSNESS,

<https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>.

²² NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11*, (April 2004) https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.

documentation has already proved to reduce the numbers of those who enroll in state services.²³

As demonstrated, Secretary Carson’s statement to “take care of your own first” is not only exclusionary, it is incorrect. Many U.S. citizens will be impacted by the proposed rule, including children in mixed status families and U.S. citizens who cannot provide proof of citizenship. The overwhelming majority of these U.S. citizens are people of color. His statement and the policy it praised fosters racial segregation. Access to housing is critical to integrated communities; the mass removal of people of color from communities will entrench segregative systems into society. The proposal will detrimentally impact racial tensions in various communities contributing to growing racial inequality. Instead of seeking to find attempts to reduce racial tensions, the proposal adds fuel to the fire, cementing the discriminatory intentions of the current administration.

3. The Proposed Rule Will Violate the Human Right to Housing

The right to housing is a fundamental human right, enshrined in international law in the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Economic Social and Cultural Rights (“ICESCR”).²⁴ This right includes the right to (1) security of tenure; (2) availability of services, materials, and infrastructure; (3) affordability; (4) accessibility; (5) habitability; (6) location; and (7) cultural adequacy.²⁵ The treaties place obligations upon governments to realize these rights for all, regardless of citizenship status, race, or nationality. International human rights commitments are essential to support marginalized and vulnerable groups such as immigrant communities, low-income households, and communities of color.

The United States has signed and ratified the UDHR, and has signed, but is yet to ratify the ICESCR. Nonetheless, these signatures represent a commitment to work toward the obligations and essential protections contained in these treaties. In recent years, the United States has taken steps to demonstrate its fidelity to the

²³ 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. pt. 5); Donna Cohen Ross, *New Medicaid Citizenship Documentation requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CENT. BUDGET & POL’Y PRIORITIES (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaidcitizenship-documentation-requirement-is-taking-a-toll-states-report>.

²⁴ Universal Declaration of Human Rights art. 25, General Assembly Resolution 217 (III) (A) (Dec. 10, 1948); International Covenant on Economic, Social and Cultural Rights art. 11(a), Dec. 16, 1966, 993 U.N.T.S. 3.

²⁵ Eric Tars, *Housing as a Human Right*, NAT’L L. CENT. HOMELESSNESS & POVERTY, https://nlihc.org/sites/default/files/AG-2018/Ch01-S06_Housing-Human-Right_2018.pdf

international human right to housing.²⁶ In 2011, the United States made commitments to the United Nation’s Human Rights Council to continue efforts to ensure access to affordable housing *for all*, and to “reduce homelessness,”²⁷ and in 2016, the United States signed the New Urban Agenda, an outcome report all signatories committed to:

*To promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders, in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.*²⁸

The proposed amendment shows complete disregard for the principles inherent in the human right to housing, as well as a wholesale rejection of the principles that the United States has already committed to uphold. The fundamental challenges with access to adequate public housing in the United States have included long waiting lists, substandard housing conditions and increasing homelessness.²⁹ These challenges plague low income communities, and increasing racial disparities show that communities of color are disproportionately impacted by these barriers.³⁰ And while previous administrations acknowledged their obligations to address and support these communities as part of their international commitments, the current administration seems intent on further embedding inequality and discrimination.

HUD’s claims that the proposed rule will address long-standing public housing concerns is belied by its own analysis, which demonstrates that the proposed rule will in fact exacerbate housing injustice. The Regulatory Impact Analysis released by HUD demonstrates that the proposed rule will reduce the quantity of affordable

²⁶ *Id.*

²⁷ *Id.*

²⁸ The New Urban Agenda, UNITED NATIONS CONFERENCE ON HOUSING AND SUSTAINABLE URBAN DEVELOPMENT (Habitat III) in Quito, Ecuador, (20 October 2016). <http://habitat3.org/the-new-urban-agenda/>.

²⁹ *Housing, Faith, Civil Rights, Social Justice, and Immigration Leaders Rally to Oppose HUD Rule That Would Separate Families or Evict Them*, NAT’L LOW INCOME HOUSING COALITION (May 10, 2019), <https://nlihc.org/news/housing-faith-civil-rights-social-justice-and-immigration-leaders-rally-oppose-hud-rule-would>.

³⁰ *Racial Disparities in Homelessness in the United States*, NAT’L ALLIANCE END HOMELESSNESS (June 6, 2018), <https://endhomelessness.org/resource/racial-disparities-homelessness-united-states/>.

homes on the market, making matters worse for countless families and individuals struggling to overcome the challenges of finding adequate, affordable housing.³¹

In light of the extremely detrimental impact that these amendments will have upon communities of color, we urge the Department of Housing and Urban Development to withdraw the proposed amendments to Section 214 of the Housing and Community Development Act of 1980. We strongly oppose any other approach and recommend that HUD focus on policies that will foster healthy and inclusive communities by treating people—immigrants and non-immigrants alike—with the dignity they deserve. Thank you in advance for considering our comments.

Sincerely,

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³¹ Sara Boboltz, *About 55,000 Children Could Be Made Homeless Under New HUD Rule*, HUFFINGTON POST (May 10, 2019), https://www.huffpost.com/entry/55000-children-could-be-displaced-under-new-low-income-housing-rule_n_5cd57f6ce4b054da4e87dd4c.