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Regulations Division  
Office of the General Counsel  
Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, D.C. 20410-0001

**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 Madam or Sir:

The Southern Poverty Law Center (SPLC) writes to strongly oppose the Department of Housing and Urban Development's (HUD) May 10, 2019 Proposed Rulemaking (proposed rule) regarding the availability of financial housing assistance to families with "mixed" immigration status. For the reasons explained below, the SPLC urges HUD to withdraw the proposed rule in its entirety and instead leave the current 1995 rule in effect.

The SPLC is a non-profit legal organization based in Montgomery, Alabama, with additional offices across the Deep South. For more than four decades, the SPLC has sought justice for and represented the needs of the most vulnerable members of our society, including by defending the rights of noncitizens against anti-immigrant policies and protecting the social safety net for low-

allows 25,000 families to receive benefits each year,<sup>4</sup> thereby creating stable homes and communities, and allowing children to maximize their potential.

The proposed rule would abandon these benefits and harm impacted communities by banning mixed-status families from obtaining financial assistance and requiring that people in subsidized units provide affirmative documentation of their citizenship or eligible immigration status. If adopted, the proposed rule would force more than 100,000 people<sup>5</sup>—the majority of them U.S. citizens or individuals with eligible immigration status<sup>6</sup>—to make the impossible choice between splitting up their families to receive the financial assistance they need to live healthy and successful lives or falling into housing insecurity and potential homelessness.

As detailed below, HUD's proposed rule change is a radical and cruel departure from the agency's longstanding policy, and its implementation would be contrary to Congress's express intent to keep families together. The effects of this proposed rule, if enacted, will be particularly devastating for children, immigrant populations, and other vulnerable or exploited populations that the SPLC works to protect. Moreover, the proposed rule would be a financial disaster for HUD and for the state and local governments that must contend financially with the resultant housing insecurity.

***The proposed rule is a radical departure from longstanding HUD policy, and its implementation would be contrary to Congress's intention to keep families together.***

HUD asserts that the proposed rule is intended to bring the agency's regulations "into greater alignment with the wording and purpose" of Section 214 of the Housing and Community Development Act of 1980 (the 1980 Act).<sup>7</sup> The agency claims that mixed-status families are not meant to receive *any* financial assistance under the 1980 Act, as amended, and that prorated

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.<sup>10</sup>

Notably, the statute uses mandatory language regarding proration: for mixed-status families, federal assistance “shall be prorated.”<sup>11</sup> The statute does not say that the agency “may” prorate, or that it shall only prorate for a specified period. Unless Congress revises Section 214 to allow for finanu5.9( t)-o224 hald4(s Tc 0 Tw -36.4 -1.15 Td [(2(t)-2-.71 -1.15 T1.15 T1m7md )-6(a)-20-8(e)6(d)4(r)3



regardless of an agency's preferred policies of the moment, it may not override the wishes of Congress,

depression, anxiety, psychological distress, poor self-reported health, and high blood pressure.

hold over tenants.<sup>45</sup> Immigrant populations already face discrimination in housing, and they have been targeted by property owners and municipalities based on the real and perceived immigration status of household members. For instance, the city of LaGrange, Georgia, refused to provide any utilities—including gas, water, and electricity—to immigrants, unless they could affirmatively prove through specific documents that they had legal status.<sup>46</sup> This left many people, including lawful residents, unable to receive utility service.<sup>47</sup> These practices are likely to increase if landlords who accept Section 8 housing vouchers are given more tools, like the proposed rule, to target immigrant communities.

### *Effects on immigrant communities*

While the proposed rule will disproportionately impact many communities of color, the Latinx community will likely bear the heaviest burden. This impact directly conflicts with HUD’s mandate to affirmatively further fair housing. Fifty-four percent of the Latinx community is already housing cost-burdened, and 28 percent are severely cost-burdened, meaning they put more than 50 percent of their income toward housing.<sup>48</sup> HUD has an affirmative duty to protect these communities against discrimination. The Fair Housing Act (FHA) directs HUD to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of” the FHA.<sup>49</sup> HUD defines “affirmatively further fair housing” to mean “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”<sup>50</sup> Specifically, that means “taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity . . . transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”<sup>51</sup> By targeting immigrant populations who already face discrimination in housing, HUD’s proposed rule runs contrary to its own responsibilities, as mandated by Congress.

### *Effects on children*

The proposed rule will also harm children in particular. HUD data show that 76 percent of mixed-status families currently receiving assistance have either ineligible children and eligible parents or eligible children and ineligible parents.<sup>52</sup> That includes nearly 19,000 households and

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<sup>45</sup> See Elora Raymond, *Evicted in Atlanta*, ATLANTA STUD. (Feb. 6, 2018), <https://www.atlantastudies.org/2018/02/06/elora-raymond-evicted-in-atlanta>.

<sup>46</sup> Azadeh Shahshahani,

82,000 people.<sup>53</sup> HUD expects those families to leave subsidized housing.<sup>54</sup> Overall, 25,000 households will be affected.<sup>55</sup>

Children make up 73 percent of the eligible members in these 25,000 households.<sup>56</sup> Extrapolating from HUD's data, that means roughly 56,000 U.S. citizen or eligible immigrant children will be affected by the proposed rule, either losing a family member as a member of their household, or falling into housing insecurity and potential homelessness if their families decide to forego housing benefits all together.<sup>57</sup>

The effect on children will be devastating, regardless of whether families choose to leave financial resources.

Homeless children have an even greater likelihood of struggling with cognitive and mental health problems, physical health problems, and poor school performance.<sup>67</sup> A child who experiences homelessness is 87 percent more likely to stop attending school.<sup>68</sup> When they are in school, homeless children perform worse on standardized tests, demonstrate worse classroom engagement and social skills, and are more likely to be suspended or expelled, even when controlling for poverty and other risk factors.<sup>69</sup> Additionally, housing insecurity leads to a greater prevalence of child maltreatment.<sup>70</sup> Homeless children are especially vulnerable and face higher rates of sexual exploitation.<sup>71</sup> Homeless LGBTQ children are particularly at risk, as they are 7.4 times more likely to experience sexual violence than their peers.<sup>72</sup> Given the benefits of affordable housing and the perils of housing insecurity, researchers have concluded that protecting families with young children from such insecurity “should be a policy priority.”<sup>73</sup>

Despite the terrible projected outcomes of housing insecurity and homelessness for children and families, HUD still expects families to choose to leave financial assistance rather than split up, because “a household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving altogether.”<sup>74</sup> If a family did come to the excruciating decision that its best option was to separate, children would still suffer. Families would be financially strained by having to pay multiple rents, and children would suffer from the emotional toll of a suddenly split family. On a purely human level, it is a “moral failure”<sup>75</sup> for the government to force families to separate—or as HUD itself describes it, “ruthless.”<sup>76</sup>

#### *Effects on U.S. citizens and individuals with eligible immigration status*

While the proposed rule is clearly meant to target immigrant communities, it will also pose unnecessary, potentially insurmountable burdens for U.S. citizens and individuals with eligible immigration status. The rule would require anyone living in a subsidized unit to submit documentation verifying their eligibility to live there.<sup>77</sup> These requirements will pose a major

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<sup>67</sup> Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR. ON BUDGET & POL’Y PRIORITIES (Oct. 7, 2015), <https://www.cbpp.org/research/housing/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term>.

<sup>68</sup> AMERICA’S PROMISE ALLIANCE, *DON’T CALL THEM DROPOUTS: UNDERSTANDING THE EXPERIENCES OF YOUNG PEOPLE WHO LEAVE HIGH SCHOOL BEFORE GRADUATION* 8 (2014).

<sup>69</sup> Kerri Tobin, *Homelessness as a Barrier to Educational Opportunity: A Statewide Analysis and Case Study* (American Educational Research Association, AERA Online Paper Repository, 2017), <https://eric.ed.gov/?id=ED593313>.

<sup>70</sup> Vásquez-Vera, *supra* note 36.

<sup>71</sup> NATIONAL NETWORK FOR YOUTH, *YOUTH HOMELESSNESS IN AMERICA: THE CURRENT STATUS AND THE WAY FORWARD* 8 (2014).

<sup>72</sup> *Id.*

<sup>73</sup> Cutts, *supra* note 59, at 1512.

<sup>74</sup> Impact Analysis at 9.

<sup>75</sup> Ashley Fetters, *The Moral Failure of Family Separation*, ATLANTIC (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/trumps-family-separation-policy-causes-national-outrage/579676/>.

<sup>76</sup> Impact Analysis at 16.

<sup>77</sup> *Id.* at 2.

barrier for many people, even those not targeted by the proposed rule. One study showed that as many as seven percent of U.S. citizens—13 million people—do not have citizenship documents readily available.<sup>78</sup>

Moreover, communities of color, the aging population, low-income individuals, and women will face the highest burdens to accessing these documents. Twelve percent of adult citizens who earn less than \$25,000 per year—a population necessarily impacted by the proposed rule—do not possess the documentation necessary to prove their citizenship.<sup>79</sup> As many as 32 percent of women do not have proof-of-citizenship documentation that indicates their current name.<sup>80</sup> Twenty-five percent of African-American citizens and 18 percent of citizens over the age of 65 do not have a photo ID.<sup>81</sup>

Indeed, proof-of-citizenship and identification requirements have caused enrollment and participation declines in other contexts. When Medicaid added a citizenship documentation requirement, half of the 44 states responding to a Governmental Accountability Office survey indicated that their enrollment numbers had dropped.<sup>82</sup> Additionally, strict voter identification laws have “disproportionately disenfranchise[d] minority communities.”<sup>83</sup> This is the latest in a long line of identification-centered requirements used by the government to attack people of color and other vulnerable populations.

The proposed rule will place extreme burdens on vulnerable and exploited communities, such as children, immigrants, the aging population, communities of color, and low-income Americans. It will cut off access to housing for these groups and others—some the intended targets of the rule and some unintended. If enacted, the proposed rule would force many families to make the terrible choice of whether to separate the family or fall into housing insecurity and potential homelessness. These scenarios—described by HUD as “ruthless”<sup>84</sup> and by a Congressional committee as an “injustice”<sup>85</sup>—will both cause extreme suffering and severely

HUD's own analysis of the proposed rule indicates that the rule will place a massive financial burden on either the agency or the taxpayers. It will also have financial implications beyond the scope of HUD's analysis, because states and municipalities will be forced to use their resources to address the homelessness and housing insecurity caused by the rule. HUD estimates that the proposed rule will cost between \$193 million and \$227 million in the first year of implementation and between \$179 million and \$210 million each subsequent year.<sup>86</sup>

The federal government's cost burden would increase because mixed-status families currently receive less financial assistance than non-mixed-status families. Because the proration system keeps ineligible household members from receiving direct assistance, mixed-status families receive an average annual per person subsidy of \$1,900, while non-mixed-status families receive an average annual per person subsidy of \$4,000. All mixed-status families would be replaced by non-mixed-status families on waiting list for various types of financial housing assistance, meaning for each mixed-status family replaced by a non-mixed-status family, HUD would spend \$2,100 more per person.<sup>87</sup> HUD also expects to spend between \$3.3 million and \$4.4 million in eviction costs,<sup>88</sup> meaning one of its justifications for the rule—that practical issues surrounding mass evictions no longer apply—is flawed, even by its own analysis.

Further, the agency did not calculate potential administrative costs, but it acknowledges that the turnover created by the proposed rule would generate these costs.<sup>89</sup> HUD does not expect Congress to put taxpayer funds toward this costly plan, meaning “the likeliest scenario” is that “HUD would have to reduce the quantity and quality of assisted housing in response to higher costs.”<sup>90</sup> Ironically, HUD claims a “benefit” of the rule is that it will help the agency “reduce unnecessary regulatory burdens,”<sup>91</sup> even though the proposed rule is entirely unnecessary and will burden the federal government to the tune of hundreds of millions of dollars per year.

HUD's analysis also does not account for the financial burdens the proposed rule will cause state and local governments. Some families will face prolonged homelessness, and municipalities will bear the financial burden. The costs faced by municipalities will vary, depending on the strategies used to combat housing insecurity and the cost of living. Most communities use shelters to respond to homelessness, but shelter stays are particularly costly. For example, Los Angeles spends roughly \$14,600 per shelter bed each year.<sup>92</sup>

The costs to the community of increased homelessness go beyond shelter stays. One study found that in Central Florida, homelessness costs communities roughly \$31,000 per person

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<sup>86</sup> Impact Analysis at 10.

<sup>87</sup> *Id.* at 12.

<sup>88</sup> *Id.* at 15.

<sup>89</sup> *Id.* at 17.

<sup>90</sup> *Id.* at 3.

<sup>91</sup> *Id.* at 10.

<sup>92</sup> Doug Smith, *Q&A: Demystifying L.A.'s System of Homeless Shelters*, L.A. TIMES (Sept. 29, 2017), <https://www.latimes.com/local/lanow/la-me-shelter-q-a-20170929-htmstory.html>.

each year.<sup>93</sup> This amount includes responses to health and safety crises, such as payment for

In sum, HUD's effort to help implement the executive branch's anti-immigrant agenda is not just cruel and unlawful, but it demonstrates a profound misunderstanding of the benefits of financial housing assistance to low-income families and to society as a whole. When HUD invests in communities by providing adequate housing to families, it improves individuals' and communities' quality of life outcomes and helps avoid the devastating social and financial effects of housing insecurity and homelessness, particularly on children. Yet HUD instead seeks to spend hundreds of millions of dollars per year to enact policies that will damage the public health and welfare and keep children and families from maximizing their potential—despite finding no appreciable benefit, other than a vague commitment to an inaccurate interpretation of the rule of law.

For these reasons, the SPLC vehemently opposes the proposed rule and urges HUD to maintain its current policy of providing prorated financial housing assistance to mixed-status families—a policy that improves the public welfare and allows those families to maximize their health and potential.

Sincerely,

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