

July 9, 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

Dear Sir/Madam:

I write on behalf of the Association for Neighborhood & Housing Development (ANHD) in opposition to the Department of Housing and Urban Development's (HUD) proposed rule regarding "verification of eligible status," published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01). ANHD opposes the proposed rule as an unconscionable and xenophobic policy that will negatively impact roughly 3,000 New York City households that include both citizens and non-citizens. We urge HUD to withdraw the rule in its entirety, and to continue to adhere to HUD's long-standing regulations regarding mixed status households: regulations that have provided appropriate and vital support to families in New York City and across the country.

Since our founding in 1974, ANHD – a coalition of community groups across New York City – has worked to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. We believe in the importance of movement-building that centers marginalized communities – including immigrants – and many of ANHD's member organizations explicitly serve the needs of NYC's diverse immigrant communities, which comprise nearly 37% of our city's population. Today, New York is home to 3.2 million immigrants, the largest number in history. Although a significant majority of immigrant New Yorkers are naturalized U.S. citizens and many more are lawful permanent residents, NYC is also home to approximately 477,000 undocumented immigrants, and over one million New Yorkers live in mixed-status households in which at least one person is undocumented.¹ Of these, approximately 3,000 households comprising 13,000 people live in public housing

¹ *State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018* (hereinafter "MOIA Report 2018"), NYC Mayor's Office of Immigrant Affairs (March 2019). Online at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf. ANHD requests that this report and all citations in this letter be considered part of ANHD's comments.

operated by the New York City Housing Authority (NYCHA), or are recipients of federal housing vouchers.²

ANHD believes that the proposed rule would have a devastating effect on immigrant New Yorkers, their families, their communities, and our city as a whole. This ill-advised policy would destabilize thousands of households in New York City alone, while doing nothing to address the root causes of the housing crisis.

As an organization focused on affordable housing and community stability, ANHD is deeply concerned with the relative scarcity of deeply affordable housing in NYC and nationwide. But scapegoating and excluding struggling mixed status families will not fix this problem. ANHD condemns the proposed rule as part of the Trump administration's coordinated attack on immigrants and a diversion from the issue that matters most: securing the funding, political will, and creative policy solutions that are necessary to ensure that every person, regardless of immigration status, has a safe and decent place to call home.

I. The Proposed Rule Will Reduce the Quality and Quantity of Federally Assisted Units

The proposed rule would *not* reduce the need for federally subsidized housing assistance – but *would* reduce the number of families that receive such assistance.

Although HUD contends that the proposed rule is intended to free up public housing units for families that desperately need them – in New York City, for instance, the waitlist for NYCHA is 177,000 – families in need are *already* living in our nation's public housing and receiving federal housing vouchers. Pushing these families out will not reduce the overall need; it will simply discount and obscure the needs of mixed status families.

At the same time, the proposed rule would decrease the total number of families receiving federal assistance. By HUD's own analysis, the proposed rule would likely lead to fewer assisted families, not more, because mixed status families currently receive assistance that is prorated to reflect the number of household members eligible to receive that assistance. By law, mixed status families do not receive housing assistance for any ineligible family members; they must pay for any rent not covered by housing assistance out of pocket. Taking assistance away from the 25,000 mixed status families currently receiving HUD assistance to give assistance to other households would require HUD to provide full subsidies for every resident, a transition that would cost HUD from \$372 million to \$437 million annually.

To pay for the added costs of the proposed rule, HUD has suggested that it would have to reduce the quantity and quality of assisted housing. At a time where only one in four

² Smith, Greg B. "HUD Rule Change Could Rip Apart Families in NYC Public Housing." *The City* (May, 15, 2019). Online at <https://thecity.nyc/2019/05/hud-rule-change-court-rend-families-in-nyc-public-housing.html>.

households that is eligible for a federal housing voucher receives it, HUD simply cannot afford to adopt a misguided and xenophobic rule that risks further shrinking the total number of families that receive support. Here in New York, our City's Housing Choice Voucher program – though the largest in the country – is still not sufficient to meet the need for rental assistance. Rather than scapegoating mixed status families and positioning families in need of federal housing assistance against each other, HUD should focus on making strategic use of its limited funds, and securing an overall increase in funding, in a way that allows the agency to fulfill its mission to “create strong, sustainable, inclusive communities and quality affordable homes for all.”

The proposed rule would lead to a reduction in the quality of federally assisted housing provided by HUD.

In many parts of this country, public housing conditions are deplorable. Thousands of tenants are living in units that are riddled with mold, rodents, and are in general states of disrepair as a result of decades of underfunding. Experts estimate that there is currently a \$50 billion backlog of desperately needed repairs; within NYCHA alone, the projected capital needs deficit is \$32 billion, \$8 billion of which cannot be addressed by the City of New York's current plans for NYCHA, even if these strategies are successful. Making matters worse, the Trump administration has proposed to eliminate the federal fund used to make (already insufficient) repairs.

Given this state of emergency, HUD should focus on using its funds to address the inhabitable conditions faced by so many of its residents. Instead, HUD has proposed a rule that the agency itself acknowledges could create about \$200 million in new costs, hurting public housing by reducing the “maintenance of the units and possibly [leading to] deterioration of the units that could lead to vacancy.”

II. The Proposed Rule Will Further Burden Immigrants Who Disproportionately Pay More for Housing Than U.S. Citizens

Immigrants and their families currently face additional barriers in finding affordable housing. Compared to U.S. citizens, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing. In New York City, for example, nearly half of all children in mixed status households live in households where rent is 30% or more of the total family income, as compared to 40.1% of children in U.S.-born-only households. In addition, over half (54.3%) the children living in mixed status households in New York City live in an overcrowded household – a situation that is most often borne of need, and one that is significantly less common in U.S.-born households, only 21.8% of which are overcrowded.³

The proposed rule will introduce additional burdens to mixed status families that already face significant hurdles in securing affordable housing, placing thousands of families at

³ MOIA Report 2018.

risk of homelessness. The proposed rule does not take these unique hardships into account. The rule should be withdrawn until HUD completes an in-depth study of these issues.

III. The Proposed Rule Will Hurt New York's Economy, Which Fundamentally Depends on Immigrants

Immigrants comprise 44% of New York City's workforce, and they play a critical role in sustaining and growing our city's economy. Nationwide, there are more than 27 million foreign-born workers in the U.S. labor market, accounting for about 17% of the total U.S. workforce. In-depth statistical analysis shows that low-income immigrants and their families make important contributions to the U.S. economy, and that overall, immigration into the United States is a long-term fiscal net positive.

The proposed rule will cut into these economic gains by increasing the housing instability of mixed status families. Immigrant workers rely on stable housing in order to maintain their employment, contribute to local economies, and help their communities thrive. The proposed rule does not adequately consider these issues, and HUD should study the extended impact the rule will have on the U.S. economy before publishing its final rule.

IV. The Proposed Rule Runs Counter to U.S. Policy Priorities on Preventing and Responding to Homelessness and Poverty

The proposed rule is in direct conflict with federal policy priorities of ending homelessness and federal mandates for states to provide certain assistance and programs to everyone. For example, the U.S. Interagency Council on Homelessness (USICH) has prioritized ending and preventing homelessness among families with children, regardless of immigration status. USICH's mission is to affirmatively remove barriers to housing access, all while acknowledging that "communities that are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways." The proposed rule directly contradicts this policy goal by erecting additional barriers to housing access. Furthermore, the rule is in conflict with the National Affordable Housing Act's edict to ensure that "every American family be able to afford a decent home in a suitable environment."⁴

Although HUD acknowledges in its Regulatory Impact Analysis that an increase in both temporary and long-term homelessness is a likely consequence of the proposed rule, HUD has not provided a detailed analysis of this economic impact. To fully understand the fiscal consequences of this rule, HUD should complete an in-depth study on these issues before finalizing the proposed rule.

⁴ 42 U.S. Code § 12701.

V. The Rule Would Violate the Fair Housing Act and HUD's Obligation to Affirmatively Further Fair Housing

Adoption of HUD's proposed rule directly violates the agency's statutory obligations under the federal Fair Housing Act (FHA).⁵ The FHA explicitly prohibits discrimination in housing on the basis of race, national origin, and family status, among other protected characteristics. FHA prohibits both intentional discrimination and policies that have a functionally discriminatory impact, regardless of the intent. The FHA further mandates that the HUD Secretary shall "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" the FHA.

The proposed rule does nothing to advance fair housing aims. Instead, it seeks to undermine the goals of the FHA by denying housing opportunities to thousands of mixed status families, using eligible immigration status as a pretext for discriminating against individuals based on their national origin. The proposed rule would also have a disproportionate and devastating impact on families with children; according to HUD's own analysis, 70% of the mixed status households negatively impacted by this proposed rule are families with eligible children and ineligible parents. This policy is wholly inconsistent with HUD's obligation to combat housing discrimination.

VI. The Proposed Rule Will Hurt Thousands of Vulnerable U.S. Citizens, Not Only Immigrants

The proposed rule would harm those who have difficulty obtaining proof of citizenship, including seniors, people with disabilities, low-income people, and those experiencing homelessness.

While it is clear that the proposed rule is a direct attack on immigrants and citizens in mixed status households, these families are not the only group that will be harmed if the rule is finalized. In addition to attacking mixed status families, the proposed rule creates red tape that threatens housing security for 9.5 million U.S. citizens currently receiving HUD assistance and all future U.S. citizens seeking these benefits. The rule would require that all who declare they are U.S. citizens under penalty of perjury provide evidence of their citizenship, a practice that has proven to be burdensome, costly and unnecessary to protect program integrity. 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. The proposed rule would require that these individuals also provide documentary proof of citizenship or nationality, such as a birth certificate, which can be extremely difficult for certain segments of the population, such as citizens of color, citizens with disabilities, and citizens with low incomes.

⁵ 42 U.S.C. § 3601.

Those who are unable to produce the required documents within the required time period under the proposed HUD rule will lose their housing assistance, and many will be evicted from their homes. A significant share could become homeless.

The proposed documentation requirements will also be particularly burdensome for recipients of rental assistance who were formerly homeless, as well as for people experiencing homelessness who could be assisted by Section 214 programs in the future. People experiencing homelessness often lose important documents such as photo identification, birth certificates, and social security cards because they have no safe places to store them. Adding more documentation requirements creates more barriers to housing for those who need it most, and could cause many people who have gained stability through rental assistance to return to homelessness. HUD has failed to take into account the added costs and burdens of these new documentation requirements and should complete an analysis of these costs before finalizing the proposed rule.

The proposed rule would negatively impact U.S. citizens and lawful permanent residents in mixed-status families, the vast majority of whom are children.

The proposed rule threatens to undermine the well-being of thousands of U.S. citizens in mixed status households, a significant majority of whom are U.S.-born children. The rule would force mixed status families into an impossible position—either break up to allow eligible family members to continue receiving assistance, or forgo the subsidies so that the families can stay together. Either outcome stands to have devastating consequences.

In most cases, mixed status families are likely to forgo subsidies to avoid separation. As a practical reality, many families will not have a choice in the matter; since children lack the legal capacity to sign leases themselves, adult heads of household must sign contracts on behalf of their family, even if those adults are not personally eligible to receive assistance. In mixed status families that lack a parent eligible to receive assistance, the proposed rule would effectively prohibit eligible U.S. citizen and lawful permanent resident children from receiving housing assistance to which they are entitled – an outcome that contravenes Congress's explicit intent to ensure that individuals with eligible immigration status could receive assistance within the context of a mixed status family home, on a prorated basis that reflects the overall composition of the family. And even where a family includes one eligible parent, many will sooner opt out than break up. In fact, HUD is banking on this, noting in its regulatory impact analysis that "HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified." 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. These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already-vulnerable population.

Those families that do elect to separate – an impossible decision that, if prompted by a draconian rule, cannot reasonably be considered a “choice” at all – would face other significant hardships. Family separations undermine family stability, and leads to toxic stress, trauma, and attachment issues in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of these children later in life, and many parents struggle to restore the parent-child bond once it has been disrupted by a separation. Unlike the proposed rules, the current rules governing federal housing assistance seek to avoid these harsh outcomes by enabling families to stay together even if only some are eligible to receive support.

We urge HUD to immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me if you would like any further information.

Adrien A. Weibgen

Director of Housing & Community Development Policy

The Association for Neighborhood & Housing Development

Email: Adrien.W@anhd.org

Tel: (212) 747-1117 Ext. 14