

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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

We are writing on behalf of the National Law Center on Homelessness & Poverty in response to the Department of Housing and Urban Development's (HUD) Notice of Proposed Rulemaking to express our strong opposition to the changes regarding the eligibility of families for financial assistance under Section 214 of the Housing and Community Development Act of 1980, published in the Federal Register on May 10, 2019 (RIN 2501-AD89; HUD Docket No. FR-6124-P-01) (the “proposed rule”). This comment raises concerns not addressed by HUD that the proposed rule will increase homelessness and inflict the costs of housing instability on eligible families and on society as a whole.

As described below in more detail, the current rules already prohibit ineligible applicants from utilizing financial assistance, making the proposed rule an unnecessary and arbitrary attempt to target some of the most vulnerable families. The proposed rule would result in many eligible individuals losing their housing and being exposed to housing instability and potential homelessness. The rule will also exacerbate the existing crisis of a lack of affordable housing and result in fewer families being able to receive assistance, and would reduce the quantity and quality of assistance available for others. The effects would stretch beyond just immigrant families, as the resulting increase in housing instability and homelessness will result in greater costs to U.S. citizen families and their communities than it currently costs HUD to keep families stably housed and work toward self-sufficiency through these programs. Accordingly, we urge the proposed rule be withdrawn in its entirety, and that the long-standing policies that allow eligible individuals in these households to utilize life-changing financial assistance continue to remain in effect.

The National Law Center on Homelessness & Poverty (the “Law Center”) is a national legal 501(c)(3) organization dedicated to ending and preventing homelessness. The Law Center believes that the human rights to housing, food, and education lie at the heart of human dignity, and we

envision a world where everyone's basic needs are met. No one should be going without these basic human needs in a country as wealthy as ours. The proposed rule directly contradicts these beliefs as it would negatively impact many individuals who currently reside in public and assisted housing, including by terminating assistance to more than 100,000 legally eligible beneficiaries, whose families will likely face eviction, housing instability, and potential homelessness.

I. THE PROPOSED RULE DOES NOT SERVE ANY LEGITIMATE PURPOSE

A. The proposed rule is contrary to the Department's goal and purpose

The proposed rule targets households consisting of both ineligible and eligible family members ("mixed status" households) and accordingly violates HUD's statutory mandate. The Fair Housing Act requires the Secretary to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" fair housing.¹ The proposed rule instead discriminates based on race and national origin by using eligibility as a pretext for targeting tens of thousands of immigrant families, effectively evicting more than 55,000 eligible children from their homes.

HUD's own analysis concedes that the proposed rule will result in *fewer* eligible households having access to one of the most basic human rights—a home.² The proposed rule is antithetical to the agency's mission to "create strong, sustainable, inclusive communities and quality affordable homes for all."³ And HUD has committed to taking "meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics"—characteristics which include race, national origin, and having a disability.⁴ But the proposed rule does nothing to "address significant disparities in housing needs and in access to opportunity," or comply "with civil rights and fair housing laws."⁵

In addition to being contrary to HUD's own mandate and purpose, the proposed rule is in direct conflict with the federal government's stance that ending homelessness nationwide is a policy priority. For example, in the National Affordable Housing Act, congressional intent is clear that "every American family [should] be able to afford a decent home in a suitable environment."⁶ This rule will evict eligible program beneficiaries—who are paying their rent and complying with their leases—from their homes. And the proposed rule is contradictory to the U.S. Interagency

¹ 42 U.S.C.A. § 3608(e)(5) (West 2019).

² 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 11 (Apr. 15, 2019).

³ HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

⁴ 24 C.F.R. § 5.152 (definition of "Affirmatively furthering fair housing").

⁵ 24 C.F.R. § 5.152

⁶ 42 U.S.C. § 12701.

Council on Homelessness's (USICH) goal of ending family homelessness.⁷ By targeting families, especially immigrant families with eligible children, the proposed rule would be contrary to USICH's goal to eliminate barriers to housing and end homelessness in "communities that are diverse—in their demographics, in their needs... and in many other ways."⁸

B. The proposed regulations directly conflict with underlying statutory authority and ignore congressional intent evidenced by the amendments to Section 214

The alleged justification for the proposed rule (or at least the justification advanced in the regulatory impact analysis, if not that initially put forth by the Secretary⁹) is that the new rule brings the regulations "into greater alignment with the wording and purpose of Section 214" by ending prorated assistance to mixed status families.¹⁰ The agency thus argues that Section 214 does not permit the receipt of financial assistance to mixed status families—despite the fact that there is no statutory language to support this claim, which directly contradicts more than 30 years of administrative precedent. To the contrary, the authorizing legislation is clear that prorated assistance is meant to keep families together in their homes, while making that assistance available only to eligible individuals. The plain language of the statute demonstrates this: "If the eligibility for financial assistance of **at least one member of a family** has been affirmatively established 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...**"¹¹ Thus the law explicitly states that assistance must be prorated and granted for any family where a single member's eligibility is verified. The statute also grants housing authorities the discretion to determine whether or not they will require the verification of the eligibility of other family members before providing prorated financial assistance to a verified individual.¹²

The current rule permits households assistance to some households in which there is at least one eligible member, and explicitly states that assistance "shall not" be denied to an eligible individual, regardless of the ineligibility of any other member of the household, if assistance is prorated pursuant to § 5.520.¹³ This means that under the current framework, an eligible person's financial

⁷ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING FAMILY HOMELESSNESS (last visited June July 2, 2019), <https://www.usich.gov/goals/families/>.

⁸ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018) available at https://www.usich.gov/resources/uploads/asset_library/Summary_of_Essential_Elements_of_the_Plan.pdf.

⁹ Tracy Jan, Trump Proposal Would Evict Undocumented Immigrants from Public Housing, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.c6fd40565b83.

¹⁰ Regulatory Impact Analysis at 1.

¹¹ 42 U.S.C. § 1436a(b)(2), *emphasis added*.

¹² 42 U.S.C. § 1436a(i)(2)(A).

¹³ 24 C.F.R. § 5.514(b)(1)(v).

assistance can only be predicated on their own eligibility pursuant to 42 USC § 1436a. And assistance cannot be stripped from an eligible individual simply because her household includes one or more family members whose eligibility has not been verified. This accords with the legislative intent of the authorizing statute and congressional intent.

Thus the proposed rule is not only contrary to the direct language of the statute, but also conflicts with more than 30 years of congressional intent. The legislative history of the statute makes this clear. Congress amended Section 214 in 1988 to ensure that mixed status families would be able to remain unified if their assistance was in danger of being terminated.¹⁴ That amendment does provide for *temporarily* grandfathered assistance for families who were already receiving aid, which is illustrative of Congress' consistent desire to ensure that immigrant families and their children would be able to remain together. HUD distorts this particular provision to argue that prorated assistance is meant to be temporary. But prorated assistance was not established until 1996—8 years later, and under a different piece of legislation.¹⁵ That legislation also makes clear that Congress wants to ensure that families can remain together, but it grants authority to local housing authorities to prorate assistance to families who have a member without verified eligibility. There is no indication that proration is meant to be temporary, contrary to HUD's unfounded claim. Thus congressional intent and the legislative history of Section 214 are clear. HUD's new interpretation ignores this intent, as well as the plain language of the statute. The agency twists the legislative history of the regulation to justify stripping assistance from thousands of eligible children by proposing a rule that would increase nationwide waiting lists, throw millions of people into disarray, and expose thousands of vulnerable households to housing instability and potential homelessness.

C. The proposed rule would reduce the quantity and quality of assisted housing, exacerbating the nationwide housing crisis and increasing homelessness

The proposed rule would exacerbate the national shortage of affordable housing and increase homelessness because HUD will be forced to sacrifice the quantity and quality of housing it can provide through Section 214.

The proposed rule would make the covered programs more costly to administer in two ways. First, because mixed status households receive prorated financial assistance, they are significantly cheaper to assist than non-mixed status households. On average, mixed households receive a subsidy that is prorated at 70 percent of the amount that an identical non-mixed status household would receive. Second, mixed status households have higher incomes than non-mixed status households. Accordingly, mixed status households receive a lower average subsidy (at \$1,900 per

¹⁴ Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

¹⁵ Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

person) than non-mixed status households (\$4,000 per person). Therefore, by terminating prorated assistance to mixed status households, HUD is increasing the cost of administering the covered programs while decreasing the number of people who can benefit. The agency's own regulatory impact analysis estimated that the increased costs would run between \$372 million and \$437 million per year.¹⁶

The proposed rule would thus worsen the housing crisis by increasing waitlists across the country. The rule will evict or strip financial assistance from 25,000 families who are more cost-effective to serve than the households who will replace them. Given that HUD does not anticipate an increase in resources to combat this increase in costs, the agency's own regulatory impact analysis admits that the proposed rule would mean that housing providers "would have to reduce the quantity and quality of assisted housing in response to higher costs."¹⁷

This reduction would mean that fewer households can utilize Housing Choice Vouchers, which are the most effective tool for helping homeless families find and maintain safe and stable housing.¹⁸ It would mean lower-quality housing for families who already live in units that suffer from decades of inadequate resources—units already in need of an estimated \$50 billion dollars' worth of repairs.¹⁹ HUD's own analysis predicts that the proposed rule would result in some of these units becoming so unlivable that the people who live there will choose to vacate the housing they desperately need, rather than continue to endure the conditions in these units.²⁰

There is already a lengthy waitlist for these programs, a shortage of affordable housing, and a national homelessness crisis—particularly a crisis of homeless families. The proposed rule fails to address any of these crises, and instead would exacerbate them all. HUD has not addressed concerns that the proposed rule would reduce the supply of affordable housing and expose many people—including thousands of families and eligible children—to homelessness. The agency must do so before finalizing any version of the proposed rule.

D. The proposed rule is unnecessary to achieve its stated goal of preserving the integrity of the program and ensure that assistance only benefits eligible beneficiaries

When the proposed rule was first announced, Secretary Carson attempted to justify the change in policy by claiming it would help address the national waitlist crisis for housing assistance. The

¹⁶ Regulatory Impact Analysis at 11.

¹⁷ Regulatory Impact Analysis at 3.

¹⁸ OFFICE OF POL'Y DEV. & RESEARCH, DEP'T HOUSING & URBAN DEV., THE FAMILY OPTIONS STUDY (Oct. 2016), https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudy_final.pdf.

¹⁹ Luis Ferre-Sadurni, *New York City's Public Housing Is in Crisis. Will Washington Take Control?*, N.Y. TIMES (Dec. 25, 2018), <https://www.nytimes.com/2018/12/25/nyregion/nycha-hud-deblasio-carson.html>; Jill Ripenhoff and Lee Zurik, *Failure to Fix: Mold. Mice. Messes.*, INVESTIGATE TV (2018), <http://www.investigatetv.com/failure-to-fix-mold-mice-messes/>; Holbrook Mohr and Jeff Donn, *Health and Safety Conditions Worsen in U.S. Subsidized Housing*, SEATTLE TIMES (Apr. 9, 2019), <https://www.seattletimes.com/business/inspections-show-deterioration-of-us-funded-housing-for-poor/>

²⁰ Regulatory Impact Analysis at 3.

current waitlist for covered programs is more than 3 million people deep, with an additional 6 million people who would like to be added to these lists if they were open.²¹ Alternatively, the agency argues in the regulatory analysis that the proposed rule will close a loophole in the current regulations and ensure that agency resources do not benefit people who are ineligible for Section 214 financial assistance.²²

But as HUD admits in the regulatory impact analysis, the current rule does not allow ineligible individuals to benefit from financial assistance. Rather, mixed status households can only receive financial assistance that is prorated for the number of eligible individuals in the household. And to calculate a household's level of assistance, the entire household's income is taken into account—including the income of ineligible members. This ensures that the prorated amount of assistance benefits only the eligible members of the household.

For example, consider a mother of two whose household uses a Housing Choice Voucher subsidy to help pay rent. She is a domestic violence survivor and holds a U-visa. This means she has documented, legal immigration status—but is ineligible for Section 214 financial assistance. Her two minor children are U.S. citizens, and thus are eligible. Under the current rules, her income is used to calculate the income of the entire household and determine the amount of the prorated subsidy that her children can receive. She, however, is ineligible for any assistance, and pays the remaining rent out of pocket. Under the proposed rule, these two minor U.S. citizen children would lose the financial assistance for which they are eligible. Their family will face eviction or must find a way to pay market rent.

E. The proposed rule is based on pretext and a discriminatory mischaracterization about who is eligible for assistance

The proposed rule is part and parcel of the Administration's ongoing attack on immigrant families, in line with the proposed public charge rule, attempted addition of a citizenship question to the census, interior enforcement of immigration policies, and consistent rhetoric demonizing and othering entire communities. The motivation for these policies are “not coming from the industry” according to the chief executive of the National Association of Housing and Redevelopment Officials, who characterized the “curious” proposal as “extraordinarily cruel.”²³ Other policy

²¹ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

²² <https://wjla.com/news/nation-world/hud-rule-will-cut-off-housing-assistance-for-undocumented-immigrant-householdss>

²³ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

analysts concur that the proposed rule is merely another of the Administration’s “whimsical immigration policies” that are part of a larger “agenda to go after immigrant families.”²⁴

The supposed justifications offered for the proposed rule are demonstrably faulty, and have no basis in sound public policy. The proposed rule would disproportionately harm families of color. It discriminates based on race and national origin by using eligibility as a pretext to target tens of thousands of immigrant families. In doing so, the rule would cost more than 55,000 eligible children their subsidy, and cause the vast majority to be evicted from their homes.

Evicting and separating immigrant families would do nothing to alleviate the waitlist crisis. There are 1.6 million families on waitlists for public housing, and more than 2.8 million families on waitlists for Housing Choice Vouchers.²⁵ There are nearly 4.5 million households currently benefitting from covered programs. The families targeted by the proposed rule comprise less than 0.5% percent of these assisted families, and an even smaller share of the millions of eligible families on waitlists. In fact, because mixed status households cost less to assist, evicting and stripping assistance from the targeted families would not alleviate the waitlist crisis but actually increase the waitlists and further reduce the supply of affordable housing.²⁶

The proposed rule is also based on a mischaracterization of who is eligible for assistance under covered programs. The Secretary attempted to justify the rule by falsely claiming that it targets exclusively non-citizens and undocumented people as ineligible for assistance.²⁷ But eligibility under Section 214 is not synonymous with U.S. citizenship, and ineligibility is not limited to people who have undocumented immigration status.²⁸ For example, you are eligible for assistance if you are a Lawful Permanent Resident, a VAWA Self-Petitioner, an Asylee or Refugee, a parolee,

²⁴ Tanvi Misra and Kriston Capps, *Why HUD Wants to Restrict Assistance for Immigrants*, CITYLAB (Apr. 19, 2019), <https://www.citylab.com/equity/2019/04/public-housing-rent-assistance-immigrant-families-hud-policy/587479/>.

²⁵ PUBLIC AND AFFORDABLE HOUSING RESEARCH CORPORATION, *Housing Agency Waiting Lists and The Demand For Housing Assistance* (Feb. 2016), <https://www.housingcenter.com/wp-content/uploads/2017/11/waiting-list-spotlight.pdf>.

²⁶ See Section I.C.; mixed status families receive less assistance because their assistance is prorated and because they have higher incomes than non-immigrant families.

²⁷ Tanvi Misra and Kriston Capps, *Why HUD Wants to Restrict Assistance for Immigrants*, CITYLAB (Apr. 19, 2019), <https://www.citylab.com/equity/2019/04/public-housing-rent-assistance-immigrant-families-hud-policy/587479/>. Moreover, HUD has characterized the 32,000 assisted families targeted by the rule as headed by “not-legal U.S. residents” (without explaining how it generated this estimate).

²⁸ Section 214 of the Housing and Community Development Act of 1980 (Section 214) limits access to federally subsidized housing programs to U.S. citizens and a specific list of noncitizen categories. 42 U.S.C.A. § 1436a(a)(1)-(6) (West 2019) (Noncitizens eligible for Section 214 housing programs: Lawful Permanent Residents, VAWA Self-Petitioners, Asylees and Refugees, Parolees, Persons Granted Withholding of Removal/Deportation, Qualified Victims of Trafficking, Persons granted admission for emergent or public interest reasons, Persons granted lawful temporary residence amnesty under the Immigration Reform and Control Act of 1986, Immigrants eligible for registry who entered the U.S. before June 30, 1948, Lawful U.S. residents and individuals who entered the U.S. under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam^[§] Immigrants admitted for lawful temporary residence prior to January 1, 1982).

have been granted withholding of removal, or are a victim of trafficking. And many people have documented immigration status, but are still ineligible for covered programs, such as a person who holds a student or employment visa, a recipient of temporary protected status, a domestic survivor who holds a U-visa, or DACA recipient. Any of these statuses still make someone ineligible for the covered programs; they already cannot benefit from financial assistance, but their families would face eviction under the rule. There is no sound justification for a rule which strips assistance from these families, and HUD has failed to justify the rule or respond to these concerns.

II. THE PROPOSED RULE WOULD INCREASE HOMELESSNESS IN THE UNITED STATES

A. By serving fewer families, the proposed rule would increase homelessness

The proposed rule would affect approximately 25,000 mixed status households, constituting more than 108,000 people. More than 70 percent of the people living in these households are eligible for financial assistance: this includes 55,000 citizen or otherwise eligible children, who would face family separation or eviction and homelessness under the proposed rule. In fact, eligible children are disproportionately impacted by the rule, as a majority of households are comprised of citizen or eligible children who live with one or two ineligible parents. More than 90 percent of the people who are an ineligible member of a mixed status family are adults whose children are eligible. The rule would harm some of the most vulnerable people that HUD serves—in all, 70 percent of people in covered programs that will be affected by the proposed rule are children, are elderly, or are people with disabilities.

These families have few distressing options. Mixed status families live in one of three types of housing. First, nearly 13,000 households (comprised of 55,000 individuals) receive Housing Choice Vouchers (also known as Section 8). Under the proposed rule, these families would see their leases terminated. They would face the choice between eviction, housing instability, and potential homelessness while they find a new, less affordable place to live; or staying in their residence—but only if they can afford the market value rent (which they, by definition, cannot) *and* if the lessor is willing to offer them a separate, unassisted lease. Another 3,000 households (comprised of 12,000 individuals) live in multi-family project-based housing. These families would face the choice between eviction, housing instability, and potential homelessness while they find a new, less affordable place to live; or staying in their residence (if they can afford the market value rent—which these families, by definition, cannot). Finally, the remaining 9,300 households (comprised of 40,000 individuals) reside in public housing, and would face eviction, housing instability, and potential homelessness.

B. The proposed rule would exacerbate homelessness among current and formerly homeless people

HUD has also failed to account for the effect that the proposed rule would have on people who are formerly or currently experiencing homelessness. When a person is experiencing homelessness, her most immediate and pressing human needs are accessing shelter, food, clothing, and services. Finding or retaining documents or identification is incredibly difficult, and is often not a realistic priority for someone who lacks a safe place to sleep. People who are experiencing homelessness frequently find that their property is lost, stolen, thrown away, or destroyed by the elements.²⁹ This includes the documents that one needs in order to access services or housing. Moreover, people experiencing homelessness are commonly subject to exclusion, harassment, or even arrest when they lack ID.³⁰ Adding documentation requirements disproportionately harms people who may not have access to these kinds of documents by unnecessarily denying them access to housing and financial assistance.³¹

People who lack an ID are already denied access to “clothing closets, shelters, food pantries, and certain public benefits,” and would now be excluded from accessing the covered programs, which include rental assistance for the formerly homeless and some homeless programs funded by Section 214. For people who are currently experiencing homelessness or were homeless before gaining housing through one of the covered programs, the proposed rule will create an additional, arbitrary barrier to accessing the kind of assistance that has been proven to be the most effective way to escape and prevent homelessness.³²

HUD has not taken into account the costs and burden that the proposed rule would impose have on people who are formerly or currently experiencing homelessness, and must complete an analysis of these impacts before finalizing any version of the proposed rule.

C. The proposed rule would add onerous recertification requirements for more than 9 million people in affected programs

The proposed rule would not only directly evict and separate thousands of families, it will impose onerous documentation requirements for the millions of people who navigate an already

²⁹ Jessica Anderson, *Nowhere To Go: The Trend To Criminalize The Nation's Homeless* (January 2013) ONLINE THESES AND DISSERTATIONS 150 available at <https://encompass.eku.edu/etd/150>.

³⁰ See *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1555-56 (S.D. Fla. 1992) (documenting incidents of malicious destruction of the property of homeless persons including “two burning incidents in Lummus Park in which City police officers awakened and handcuffed class members, dumped their personal possessions – including personal identification, medicine, clothing and a Bible – into a pile, and set the pile ablaze.”).

³¹ NAT'L CTR. ON HOMELESSNESS & POVERTY, *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11* (Apr. 2004), https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.

³² OFFICE OF POL'Y DEV. & RESEARCH, DEP'T HOUSING & URBAN DEV., THE FAMILY OPTIONS STUDY (Oct. 2016), https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudy_final.pdf.

convoluted eligibility process.³³ The new requirements would directly result in the loss of assistance for 25,000 mixed status households, constituting more than 108,000 people, as noted in Part II.A. But the requirements create an additional bureaucratic obstacle by increasing documentation requirements for the nearly 10 million U.S. citizen and eligible individuals who currently receive financial assistance under covered programs. The new requirements would require that each household member—people who already declare their citizenship under penalty of perjury—provide evidence of citizenship in addition to their declaration.³⁴ This requirement is demonstrably unnecessary for protecting the integrity of the program; it would merely add administrative burdens and impose costs on both assisted families and housing providers.³⁵ A 2007 GAO report found that similar requirements imposed on Medicaid beneficiaries increased administrative costs of the program, generated confusion among applicants and beneficiaries, and created further administrative costs for states. Moreover, the change made it such that even fewer *eligible* people were willing or able to enroll in the program and utilize assistance. It also increased the time that local administrators had to spend on applications, appeals, and redeterminations of eligibility,³⁶ all without narrowing the proportion of benefits disbursed to eligible recipients.³⁷

The costs of this overregulation would disproportionately be borne by some of the most vulnerable U.S. citizens—the same people that Secretary Carson wants to help.³⁸ Seventy percent of people utilizing covered programs are children, elderly, or people with disabilities.³⁹ Documentary proof of nationality or citizenship is not readily available for as many as 7 percent of U.S. citizens. And such documentation is even more difficult to obtain for people with low incomes, people of color, people with disabilities, and older people.⁴⁰ For many, getting to a government office or obtaining the funds to obtain or replace these records is a significant barrier alone. Some never even received

³³ CBPP analysis of HUD administrative data. Data include Section 8, public housing, Rent Supplement, and Rental Assistance (RAP) programs, but do not include the Section 236, Section 235 (without Rent Supp), Section 23 Leasing Housing Assistance, or Housing Development Grant programs.

³⁴ 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. part 5).

³⁵ Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CPBB (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

³⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens* (June 2007), <https://www.gao.gov/new.items/d07889.pdf>.

³⁷ Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CPBB (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>

³⁸ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

³⁹ CBPP analysis of HUD administrative data. Data include Section 8 and public housing programs, but do not include the Rent Supplement, Rental Assistance (RAP), Section 236, Section 235, Section 23 Leasing Housing Assistance, or Housing Development Grant programs.

⁴⁰ Ina Jafe, *For Older Voters, Getting the Right ID Can Be Especially Tough*, NPR: ALL THINGS CONSIDERED (Sept. 7, 2018), <https://www.npr.org/2018/09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough>.

these documents to begin with. Nearly 1 in every 8 U.S. citizens whose income is less than \$25,000 per year simply do not have any proof of citizenship. 1 in 4 Black Americans do not have a photo ID. Nearly 1 in 5 U. S. citizens over the age of 65 do not have a photo ID. For these populations, proving their already sworn-by citizenship is not nearly so simple as producing documentation at annual recertification. It would involve time-consuming and costly trips to government offices, potential loss of assistance and eviction, and lengthy appeals processes.

For example, in the case of elderly beneficiaries, the proposed rule would endanger the housing of more than 120,000 older adults who will be required to obtain proof of their immigration status. Presently, assisted people over the age of 62 must provide proof of age and a declaration of eligible status. Under the proposed rule, they would also have to provide proof of citizenship; this is an unnecessary addition to already-arduous certification procedures.

People with disabilities represent a significant fraction of those assisted by covered programs, and members of this population are particularly vulnerable to homelessness. Homeless families are more than 2.6 times more likely to have an adult family member with a disability, and the average rate of disability among students experiencing homelessness is 8% higher than the overall student population.⁴¹ These families would be even more likely to experience homelessness in the face of the proposed rule given that it exposes them to eviction and housing stability.

The proposed rule fails to even mention eligible older adults and the added burdens the rule would impose on this population and their housing providers. HUD should perform a comprehensive study on the impact that the proposed rule would have on these vulnerable eligible beneficiaries before finalizing any version of the rule.

D. The proposed rule would force some mixed status households to forego their assistance and be evicted in order to maintain family unity, exacerbating family homelessness

Mixed status families would be forced to choose between foregoing their assistance to maintain family unity (which could expose them to potential homelessness) or family separation.

To be sure—as HUD admits outright and repeatedly in the regulatory impact analysis—it is extremely likely that the majority of these mixed status families will choose not to separate from their children, rather than sacrifice family unity to maintain their meager subsidy. Even if one

⁴¹ HUD, The 2016 Annual Homeless Assessment Report (AHAR) to Congress (Nov. 2016) *available at* <https://files.hudexchange.info/resources/documents/2016-AHAR-Part-2.pdf>; National Center for Homeless Education, *Federal Data Summary School Years 2014-2015 to 2016-2017* (Feb. 2019) *available at* <https://nche.ed.gov/wp-content/uploads/2019/02/Federal-Data-Summary-SY-14.15-to-16.17-Final-Published-2.12.19.pdf>.

parent were willing to leave the household and sacrifice herself so that the family could retain the subsidy, “a household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving together.”⁴² The economically rational choice for any family would be to choose not to separate parents from minor children, since the financial subsidy provided by the program is outweighed by the economic benefits of growing up in a two-parent household.⁴³

And for many families, separation to maintain their subsidy and homes would not even be an option. The proposed rule would end prorated assistance for mixed status families, punishing citizen and legal permanent resident children and families who have ineligible parents and family members. For the vast majority of these households, there is not even the opportunity to choose separation over subsidy: nearly 39,000 children live in households with ineligible parents. These children cannot legally sign a lease, and the new rule would categorically strip from them the financial assistance for which they are legally eligible.

There are more than 55,000 eligible children who would be directly affected by the proposed rule targeting mixed status families.⁴⁴ The rule would strip these eligible children of their subsidy and effectively punish them for having ineligible family members. And families who are evicted are likely to experience housing instability or homelessness, to move into low-quality housing, and to suffer adverse mental and physical health outcomes as described in Section III.A.⁴⁵

E. Some ineligible members of mixed status households may elect to leave or be evicted, which will may lead to homelessness for the ineligible individual

HUD may be correct in assuming “that most mixed households will leave” covered housing programs in response to the rule because of fear or because they are unable to confirm the eligibility of one member of the household (see Section II.B.). However, it is possible that some ineligible members may elect to or be asked to leave their families in order to preserve the rest of the family’s ability to remain in assisted housing.⁴⁶ As HUD almost acknowledges, this situation is impossible for the vast majority of families comprised of U.S. citizen children who live with

⁴² Regulatory Impact Analysis at 9.

⁴³ In terms of children’s economic mobility, cognitive, behavioral, and physical, and mental health, two-parent households produce better outcomes on average than single parent households. Susan L. Brown, Wendy D. Manning, and J. Bart Stykes, *Family Structure and Child Well-Being: Integrating Family Complexity*, JOURNAL OF MARRIAGE AND FAMILY (Feb. 2015) 77(1): 177–190. doi:10.1111/jomf.12145.

⁴⁴ Regulatory Impact Analysis at 6-8 (noting that 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).

⁴⁵ Allison Bovell-Ammo and Megan Sandel, *The Hidden Health Crisis of Eviction*, BOS. U. SCH. OF PUB. HEALTH (Oct. 5, 2018), <http://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>; Matthew Desmond, and Rachel Tolbert Kimbro, *Evictions Fallout: Housing, Hardship, and Health*, 94 SOCIAL FORCES 295 (Feb. 2015).

⁴⁶ Regulatory Impact Analysis at 8.

their ineligible parents.⁴⁷ These children are legally incapable of signing a lease, and of course do not have the option of evicting their parents in order to avoid homelessness for the entire family. Similarly, it is patently absurd to suggest that the 6% of families with ineligible children and eligible parents will reasonably choose for their children to be removed from the family in order that the eligible parents be able to maintain their assistance.

But for the 24% of assisted households in which some other immediate family member is ineligible, these families may face the excruciating forced choice of having an ineligible adult child, other family member, aunt, uncle, or grandparent elect to leave their family in order for the rest of the household to be able to retain assistance and stay housed. These more than 7,500 individuals—ineligible people who cannot receive assistance but whose income is used to prorate the subsidy amount—may be especially likely to face housing instability and potential homelessness. The ramifications of either decision are monumental: family instability harms children’s health and education outcomes for years to come. Moreover, family separation harms a child’s ability to maintain healthy relationships with her family members in both the short and long term.⁴⁸

F. Some families—including eligible families—will choose not to or be unable to recertify, and be subject to housing instability and potentially homelessness

The cruel and arbitrary policies underlying the proposed rule make people who are in need of assistance afraid to seek help, even when they are eligible to do so.⁴⁹ HUD is fully aware that the confusion and fear generated by this unnecessary rule would result in both eligible and ineligible households vacating publicly assisted housing, “whether [or not] that fear is justified.”⁵⁰ The agency’s regulatory impact analysis admits this outright, predicting “that fear of the family being separated would lead to prompt evacuation by most mixed status households.”⁵¹ Many people in this population—people who are already vulnerable to housing instability—are likely to be scared into homelessness by the proposed rule.⁵² Similar documentation requirements consistently generate confusion among applicants and beneficiaries, greater administrative costs, and reduce the number of eligible people who choose or are able to enroll in the program, as well as result in

⁴⁷ Or otherwise eligible minors.

⁴⁸ Laura C. N. Wood, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, 2 BMI PAEDIATRICS OPEN (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6173255/>.

⁴⁹ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

⁵⁰ Regulatory Impact Analysis at 7.

⁵¹ Id.

⁵² PRATT CTR. FOR CMTY. DEV., CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

the loss of benefits for many more people, all without increasing the proportion of benefits disbursed to eligible recipients.⁵³

The proposed rule would also have a chilling effect on family immigration, on the willingness of family members to participate in programs that promote family unity such as sponsorship, and on the usage of housing and benefits which are the most effective ways of escaping poverty and improving one's life. And immigrant families are particularly vulnerable to discrimination and intimidation from private housing providers who make threats in response to the Administration's attempts to target immigrants. The proposed rule would likely scare some of these families away from trying to receive assistance or recertify at all.⁵⁴

III. THE PROPOSED RULE WOULD INFILCT SIGNIFICANT COSTS THAT DO NOT JUSTIFY THE CHANGE IN POLICY

A. The human costs of homelessness are devastating for the families and U.S. citizen children who would suffer because of the proposed rule

The proposed rule would result in housing instability for hundreds of thousands of families, reducing their incomes and thus their ability to pay for food and healthcare, to prioritize their children's education and healthy development, and to live in safe and secure communities.⁵⁵ Severely rent burdened families—those who spend more than half their income on rent—spend \$200 less on food, nearly \$100 less on transportation, and about \$80 less on healthcare per month than families who pay less than 50% of their income to rent.⁵⁶ For these families, assisted housing is the most effective way to avoid homelessness and improve their lives and the lives of their children. A housing subsidy makes a family 20 times less likely to experience housing instability.⁵⁷

⁵³ Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up*, CPBB (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>

⁵⁴ Kriston Capps, *In California, Landlords Threaten Immigrant Tenants with Deportations*, CITYLAB (Apr. 5, 2017), <https://www.citylab.com/equity/2017/04/landlords-are-threatening-immigrant-tenants-with-ice-deportations/521370/>

⁵⁵ Jason M. Fletcher, Tatiana Andreyeva, & Susan H. Busch, *Assessing the Effect of Increasing Housing Costs on Food Insecurity* (Nov. 12, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503043; ENTERPRISE, *Renters Report Housing Costs Significantly Impact Their Health Care* (Apr. 3, 2019), https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care.

⁵⁶ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *The State of the Nation's Housing 2018* (2018) http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf.

⁵⁷ Shinn, M.; Weitzman, B. C.; Stojanovic, D.; Knickman, J. R.; Jimenez, L.; Duchon, L.; James, S.; Krantz, D. H. 1998. *Predictors of Homelessness among Families in New York City: From Shelter Request to Housing Stability*. AMERICAN JOURNAL OF PUBLIC HEALTH 88(11): 1651-1657.

Eviction is a driver of homelessness, particularly for families, who face significant barriers to finding a safe place to live after losing their assistance.⁵⁸

Housing instability and homelessness are devastating for families. Eviction and moving themselves are traumatic events, especially for the children in these families. Children who experience housing instability suffer short term consequences: they often move into low-quality or overcrowded housing, and experience interim stress and life disruptions, including disruptions that inhibit their ability to succeed in school.⁵⁹ They suffer long term adverse impacts as well, such as struggling in school,⁶⁰ with lasting ramifications for their educational outcomes.⁶¹ They make more frequent visits to the emergency room and are likely to be in worse health than stably housed children.⁶² These impacts have lifelong consequences for their own well-being and the strength of their communities. Even for families who, under the new rule, would make the excruciating forced choice for the ineligible member (rather than the entire family) to leave the home, family separation is a stressful and traumatizing experience for children. It demonstrably alters the chemistry of a child's growing brain, and produces adverse consequences which last a lifetime.⁶³

U.S. citizen and otherwise eligible children will be among those most directly harmed by the proposed rule. By taking away the financial assistance for which these children are eligible and which allows them to stay in their homes, the proposed rule forces families to choose between eviction from housing that is proven to improve their lives, or separation to maintain their meager subsidy. The rule thus takes away children's access to assistance that has been shown to improve the lives of more than one million children every year and allow families to lift themselves out of poverty.⁶⁴ Families with access to financial subsidies for housing—as opposed to shelters or other temporary housing—have the most housing stability as well as fewer family separations, less domestic violence, less psychological distress, increased food security, and increased school

⁵⁸ Matthew Desmond, Weihua An, Richelle Winkler, Thomas Ferriss, *Evicting Children* (September 2013) SOCIAL FORCES 92(1) 303–327; Matthew Desmond, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016).

⁵⁹ Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households*, NYU LAW (Dec. 2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf.

⁶⁰ *Housing Instability is Linked to Adverse Childhood Behavior*, HOW HOUSING MATTERS (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

⁶¹ Mary Cunningham & Graham MacDonald, *Housing as a Platform for Improving Education Outcomes among Low-Income Children*, URBAN INSTITUTE (May 2012), https://www.researchgate.net/profile/Heather_Schwartz/publication/267687704_Housing_as_a_Platform_for_Improving_Education_Outcomes_among_Low-Income_Children/links/546621100cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf.

⁶² Alison Bovell & Megan Sandel, *The Hidden Health Crisis of Eviction*, CHILDREN'S HEALTH WATCH BLOG (Oct. 5, 2018), <http://childrenshealthwatch.org/the-hidden-health-crisis-of-eviction/>.

⁶³ Shruti Simha, *The Impact of Family Separation on Immigrant and Refugee Families*, 80 N C MED J. 95, 96 (2019).

⁶⁴ Liana Fox, *The Supplemental Poverty Measure: 2017* (Sept. 12, 2018) <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-265.pdf>.

attendance.⁶⁵ These children go on to have higher incomes and better health outcomes. They are less likely to become involved with the criminal justice system; they experience less food insecurity; and they are less likely to experience homelessness.⁶⁶

Homelessness is particularly traumatic for children and their development. These traumatic effects are compounded over time, and are particularly detrimental for younger and more vulnerable children.⁶⁷ A homeless child is nearly 90% more likely to drop out of school than a child who has safe and stable housing.⁶⁸ They are, consequently, more likely to fall behind academically and be subject to school discipline.⁶⁹ Homeless children suffer from more frequent and severe mental and physical health problems, and are more likely to experience personal and community violence.⁷⁰ And they are more likely to be victims of physical or sexual violence than their housed peers.⁷¹

HUD has failed to do its due diligence and address the effect that the proposed rule will have on exacerbating homelessness in the United States, and to estimate the costs of homelessness for the people who would lose their housing and for society as a whole. Other federal agencies have frequently recognized the importance of housing for families who are traumatized by homelessness, as “housing plays as an essential platform for human and community development. Stable housing is the foundation upon which people build their lives—absent a safe, decent, affordable place to live, it is next to impossible to achieve good health, positive educational outcomes, or reach one’s economic potential.”⁷²

B. The societal costs of increased homelessness would be far greater than the cost to continue to serve families and prevent them from experiencing homelessness

⁶⁵ THE BASSUK CENTER, *Services Matter: How Housing & Services Can End Family Homelessness* at 11 (Nov. 2015), <https://www.bassukcenter.org/wp-content/uploads/2015/11/Services-Matter.pdf>.

⁶⁶ Fredrik Andersson, and John C. Haltiwanger, *Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing*, NATIONAL BUREAU OF ECONOMIC RESEARCH, Working Paper No. 22721 (Sept. 2018), <http://www.nber.org/papers/w22721>.

⁶⁷ Megan Sandel, Richard Sheward, and Lisa Sturtevant, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children’s Health*, INSIGHTS FROM HOUSING POLICY RESEARCH (June 2015), <https://www.issuelab.org/resources/21731/21731.pdf>.

⁶⁸ Erin S. Ingram, John M. Bridgeland, Bruce Reed, and Matthew Atwell, *Hidden in Plain Sight: Homeless Students in America’s Public Schools*, CIVIC ENTERPRISES AND HART RESEARCH ASSOCIATES (2016), <http://www.americaspromise.org/report/hidden-plainsight>.

⁶⁹ John Fantuzzo, Whitney A. Leboeuf, Heather L. Rouse, and Chin-Chih Chen, *Academic achievement of African American boys: A city-wide, community-based investigation of risk and resilience*, JOURNAL OF SCHOOL PSYCHOLOGY (Sept. 2012) 50(5):559-79 doi:10.1016/j.jsp.2012.04.004.

⁷⁰ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS (2015) at 19, https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

⁷¹ LJ Anooshian, *Violence and Aggression in the Lives of Homeless Children: A Review*, AGGRESSION AND VIOLENT BEHAVIOR (2005) 10(2): 129-152.

⁷² U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *Opening Doors: federal strategic plan to prevent and end homelessness* (2015), https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

There are significant costs to society associated with family homelessness. Emergency housing—such as shelters—are expensive for local communities, and these costs will be passed from HUD to the cities and states that operate these programs. The most effective way to prevent homelessness is to provide subsidies to families who need it.⁷³ Housing Choice Vouchers (one of the covered programs) are the most effective way to lift eligible families out of poverty; for example, providing assistance to just 70% of the eligible unassisted families would reduce child poverty by 3 percentage points.⁷⁴ HUD’s Family Options Study measured the impact of access to Housing Choice Vouchers and found that families with vouchers were more likely to have housing than to need emergency shelter or experience homelessness. Moreover, vouchers are cost-effective: providing one family with an HCV costs an average of \$1,172 per month, while providing emergency shelter costs \$4,819.⁷⁵

The proposed rule also implicates the long term impacts of homelessness, including the huge costs that homelessness imposes on education and healthcare systems.⁷⁶ Child poverty and homelessness in the U.S. cost us as a society more than \$1 trillion each year.⁷⁷ These costs are much greater than the cost of the modest rental subsidies provided by the covered programs.⁷⁸ Moreover, the cost of emergency and transitional resources for these households are levied on local and state entities. Thus the proposed rule would pass these costs from HUD to states—another increased cost which the agency has failed to account for. Vouchers are the most effective way to alleviate costs imposed to the child welfare system, for example, because it reduces domestic violence and substance abuse, food insecurity, and improves school outcomes.⁷⁹

In a country where half a million people are homeless on a given night and more than 3.5 million people experience homelessness in a given year,⁸⁰ homelessness is both a cause and result of poor

⁷³ OFFICE OF POL’Y DEV. & RESEARCH, DEP’T HOUSING & URBAN DEV., COSTS ASSOCIATED WITH FIRST-TIME HOMELESSNESS FOR FAMILIES AND INDIVIDUALS at P-1 (Mar. 2010),
https://www.huduser.gov/publications/pdf/Costs_Homeless.pdf.

⁷⁴ OFFICE OF POL’Y DEV. & RESEARCH, DEP’T HOUSING & URBAN DEV., THE FAMILY OPTIONS STUDY (Oct. 2016),
https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudy_final.pdf.

⁷⁵ *Id.*

⁷⁶ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *Opening Doors: federal strategic plan to prevent and end homelessness* at 19 (2015),
https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

⁷⁷ NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, *A Roadmap to Reducing Child Poverty*,
<https://doi.org/10.17226/25246> (2019).

⁷⁸ U.S. DEP’T OF HOUSING AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *Costs Associated with First-Time Homelessness for Families and Individuals* (2010) at ES-10
https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf.

⁷⁹ Maya Brennan, Mary Cunningham, and James Gastner, *Ending Family Homelessness: An Opportunity for Pay-for-Success Financing*, URBAN INSTITUTE at 9 (Aug. 2017),
https://www.urban.org/sites/default/files/publication/92566/ending_family_homelessness_through_pfs.pdf.

⁸⁰ Facts on Homelessness, PROJECT HOME, <https://projecthome.org/about/facts-homelessness> (last visited June 20, 2019).

health outcomes, chronic disease, and early death.⁸¹ In the U.S., housing is healthcare.⁸² The proposed rule will be detrimental to public health because it will lead to eviction and homelessness for many families, including would housing stability for the tens of thousands of U.S. citizen children whose families would necessarily face eviction because of the proposed rule. The regulatory impact analysis makes a passing reference to the costs of chronic homelessness, without attempting to estimate the scale or impact of these costs.⁸³ HUD has failed to account for these costs and the concerns raised throughout this section. The agency should do its due diligence and perform a comprehensive study on the impact the proposed rule would have on housing and homelessness before finalizing the proposed rule.

C. The proposed rule would generate substantial costs which would be passed on to local entities and housing providers

HUD asserts that it does not expect that the rule would incur administrative costs, though the agency does not attempt to estimate the “sizeable” turnover costs that the rule would admittedly generate. However, a 2007 GAO report found that similar requirements proposed for people receiving Medicaid benefits would not only increase the administrative costs of the program, but also both limit enrollment for eligible individuals and result in the loss of benefits for many more eligible people.⁸⁴ Though the regulatory analysis bluntly admits that the increased costs created by the rule will not be accompanied by an increase in resources, HUD fails to at all address the increased administrative costs to housing authorities and other subsidized housing providers that would be generated by the proposed rule.

The change would require tens of thousands of public housing agencies and private landlords to collect citizenship documentation for the more than nine million people currently benefitting from the covered programs. The change will further require housing providers to establish their own policies and criteria to determine whether a family can receive continued or temporary deferral of assistance. It will also require PHAs and appeals officers to spend more time verifying eligibility and recertifying households, as well as reviewing appeals for the many households that are likely to be incorrectly terminated or to need time to collect documents. If a family member cannot locate or afford the correct documents—which may be the reason a person cannot prove their eligibility to begin with—a household may be unlawfully denied recertification. This process would take

⁸¹ NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, *Homelessness & Health: What's The Connection* (June 2011), http://www.nhcchc.org/wp-content/uploads/2011/09/Hln_health_factsheet_Jan10.pdf.

⁸² Nabihah Maqbool, Janet Viveiros, & Mindy Ault, *The Impacts of Affordable Housing on Health: A Research Summary*, CENTER FOR HOUSING POLICY, (Apr. 2015), <https://www.rupco.org/wp-content/uploads/pdfs/The-Impacts-of-Affordable-Housing-on-Health-CenterforHousingPolicy-Maqbool.etal.pdf>.

⁸³ Regulatory Impact Analysis at 16.

⁸⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens* (June 2007), <https://www.gao.gov/new.items/d07889.pdf>.

additional provider time and resources, as does the need to review the appeal. This also incurs costs to families who may have to go to court, potentially in the midst of losing their housing. All this would come at increased cost of administering the program while resulting in fewer families served, a reduction in “the quantity and quality of assistance available”, and worsen the national homelessness crisis and affordable housing shortage.

The proposed rule would incur an estimated \$4.4 million in eviction costs to terminate the assistance of tens of thousands of families and remove them from their homes.⁸⁵ It would incur what HUD calls “sizeable” turnover costs, though the agency fails to either estimate these costs or address their impacts (and must do so before finalizing any version of this rule).⁸⁶ These turnover costs would be the result of evictions, serving more expensive households, and addressing the concerns of immigrant families. However, the agency has apparently estimated that these costs will be low, as “HUD expects that fear of the family being separated would lead to prompt evacuation” and that families will choose to forgo their assistance out of fear rather than having to be officially removed from their homes.⁸⁷ Confusion over the proposed rule would also result in costs imposed on housing providers from the increased questions, calls, and visits from fearful tenants, as well as the increased time and resources that providers would have to spend updating forms and notices to inform tenants and applicants about the new rules and potential implications. Additionally, there are likely to be turnover costs from the chilling effect of the proposed rule, given that some of the 250,000 eligible households comprised of eligible noncitizens will nonetheless choose to forgo their assistance out of fear. These costs are not accounted for in the proposed rule.

These increased costs will reduce the number of families that can be served through covered programs and exacerbate the national homelessness crisis. Additionally, these costs may deter providers from participating in the covered programs, further decreasing the affordable housing supply and exacerbating the shortage of housing. By forcing already overburdened public housing authorities and housing providers to take on additional administrative costs, without providing the benefit of reducing waitlists or improving public housing, HUD is acting in direct contradiction to its statutory mandate and commitment to reducing homelessness.

IV. CONCLUSION

HUD’s own analysis indicates that the proposed rule will significantly increase family homelessness, violating its statutory mission, which alone should tell the agency this harmful rule should be withdrawn. Even though the current rules already prohibit unverified or ineligible members from receiving assistance, the agency is arguing that the proposed change is necessary

⁸⁵ Regulatory Impact Analysis at 15.

⁸⁶ Regulatory Impact Analysis at 4.

⁸⁷ Regulatory Impact Analysis at 7.

to align the program with statutory authority. However, as the issues highlighted in this letter demonstrate, the proposed rule lacks any basis in, and in fact contradicts, the underlying statute. Moreover, it is contrary to sound public policy, basic morality, and congressional intent. We therefore urge HUD to immediately withdraw the proposed rule and dedicate its efforts to advancing policies that help all families be safely housed, prevent and end homelessness, and strengthen our communities.

Housing is a human right, dependent on humanity, not on immigration status. Ensuring the universal human rights of all our residents, including economic and social rights, enables everyone to live dignified lives and develop to their fullest potential, benefitting us all.

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