

Submitted via www.regulations.gov

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-income people across America. The SPLC believes the proposed rule will needlessly harm the communities the SPLC fights to protect.

Since 1995, HUD has provided prorated financial housing assistance to households comprised of U.S. citizens, individuals with eligible immigration status, and individuals who do not have eligible immigration status—otherwise known as "mixed-status families."¹ Such financial assistance can take the form of housing vouchers, public housing, or project-based housing.² HUD currently prorates its financial assistance to mixed-status families by subsidizing the housing of only the eligible members of the household, but also counting the income of the non-eligible members when determining the size of the subsidy.³ This decades-old rule currently

¹ 60 Fed. Reg. 14,816 (Mar. 20, 1995).

² See Housing and Community Development Act of 1980, Pub. L. No. 96-399, § 214, 94 Stat. 1637 (1980) (codified as amended at 42 U.S.C. § 1436a (2018)).

³ 24 C.F.R. § 5.520 (a)-(b).

allows 25,000 families to receive benefits each year,⁴ 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 people⁵—the majority of them U.S. citizens or individuals with eligible immigration status⁶—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).⁷ The agency claims that mixed-status families are not meant to receive *any* financial assistance under the 1980 Act, as amended, and that prorated assistance was only meant to be temporary in light of practical issues with mass evictions and verification systems.⁸ Because of technological advances in immigration status verification, HUD asserts that proration “should rarely be applicable and then of short duration.”⁹

This argument fails for two reasons: *First*, the plain language of Section 214 contradicts HUD’s position. *Second*, as the legislative history makes clear, Congress has demonstrated that it did not intend for mixed-status families to be evicted, and it affirmed proration as its preferred method of assisting mixed-status families a year after the original rule was published. As such, the policies contained within the proposed rule have long been rejected by HUD.

Section 214, codified at 42 U.S.C. §1436a as amended by subsequent statutes, provides in pertinent part:

⁴ DEP’T OF HOUSING & URB. DEV., DOCKET NO. FR-6124-P-01, REGULATORY IMPACT ANALYSIS, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980: VERIFICATION OF ELIGIBLE STATUS 8 (2019) [hereinafter Impact Analysis].

⁵ Impact Analysis.

⁶ *Id.* at 6.

⁷ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20,589. *See also* Impact Analysis at 1.

⁸ Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. at 20,591.

⁹ *Id.*

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.¹⁰

Notably, the statute uses mandatory language regarding proration: for mixed-status families, federal assistance “shall be prorated.”¹¹ 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 financial assistance to be dispersed at HUD’s discretion, HUD has a mandatory directive to prorate assistance to mixed-status families. There is no support in Section 214 for HUD’s position that proration was meant to be temporary.

The current rule reflects Congress’s mandate that financial assistance be prorated. The rule states that anyone living in a household covered by Section 214—which includes any financial assistance, such as housing vouchers, public housing, or project-based housing¹²—who applies for housing assistance must either (1) submit a declaration of U.S. citizenship or declaration of eligibility with noncitizen status, along with documentation for verification,¹³ or (2) choose not to contend U.S. citizenship.¹⁴ If a family living in the same household contains both individuals who contend citizenship or eligible immigration status and people who do not, that family is considered a mixed-status family.¹⁵ While an individual with a non-eligible immigration status may live with people receiving financial assistance, the amount of assistance is prorated to include only eligible family members.¹⁶ Moreover, the total household income used to calculate the amount of assistance any family receives includes the income of non-eligible tenants.¹⁷ This means that under the current rule, mixed-status families receive substantially less assistance than non-mixed-status families. The average per-person subsidy is \$1,900 per year for mixed-status families and \$4,000 per year for non-mixed-status families.¹⁸ The plain language and purpose of Section 214 unequivocally protect mixed-status families and are memorialized in HUD’s current regulation from 1995.

The sequence of Congressional amendments that led up to the current version of Section 214 further demonstrates that the existing rule reflects Congressional intent. In 1987, Congress amended the 1980 Act out of explicit concern that the original language of the Act would cause

¹⁰ 42 U.S.C. § 1436a(b)(2).

¹¹ § 1436a(b)(2).

¹² *See* 42 U.S.C. § 1436a.

¹³ § 5.508(b). Those who are eligible with noncitizen status include individuals who have been lawfully admitted for permanent residence, excluding, among others, visitors, tourists, diplomats, and students who have entered the U.S. temporarily. It also includes individuals granted asylum, withholding, or another discretionary lawful status by the attorney general. For the full list of eligible categories, see 42 U.S.C. § 1436a(a).

¹⁴ § 5.508(e).

¹⁵ § 5.504(b).

¹⁶ § 5.520(a).

¹⁷ § 5.520(b).

¹⁸ Impact Analysis at 12.

HUD to either separate mixed-status families or force them off financial assistance. The amendment states, under the heading “PRESERVATION OF FAMILIES,” that even if after a hearing it was determined that financial assistance should be terminated, the agency “shall” still prioritize preservation of families over termination.¹⁹

Indeed, Congress was clear that it was amending Section 214 specifically to avoid the outcomes that would flow from the proposed rule. The House Committee on Banking, Finance and Urban Affairs noted in a 1987 report that, without the amendment, the 1980 Act would have been implemented in the exact way that HUD now proposes—with the eviction of or denial of admission to citizens or individuals with eligible immigration status because other members of their household were ineligible.²⁰ The Committee was concerned that “the imposition of [the potential] documentation and verification requirements upon citizens and aliens alike [is] not only unduly burdensome, but also impossible even for some citizens to meet.”²¹ The Committee further clarified that Congress did not intend for HUD to interpret the 1980 Act in this way, and that “the original intent of Congress [was] that families in which at least one person is eligible are not disqualified”²²

With this history and clear directive in mind, HUD created the proration system in its 1995 regulation. In adopting the rule, HUD noted that “[a] few commenters urged HUD” to do what the current proposed rule does: drop all mixed-status families from federal housing assistance.²³ However, HUD declined to take that drastic and unintended step, because the statute specifically stated that families should be preserved. Moreover, despite objections from public commenters who wanted the agency to provide either more or less assistance to mixed-status families, HUD determined that proration of assistance was consistent with Section 214.²⁴ The original final rule regarding financial assistance to mixed-status families was published on March 20, 1995.²⁵ Congress has effectively endorsed the rule through its enactment of the Use of Assisted Housing by Aliens Act of 1996, which added the “shall be prorated” language.²⁶

Not only does the proposed rule reverse HUD’s longstanding regulatory approach despite no extenuating circumstances demanding such a change, it also creates a policy that is directly contrary to Congress’s intent—a policy almost identical to one that the House Committee on Banking, Finance and Urban Affairs called an “injustice” that would “produce extraordinary hardships” and “unnecessary financial difficulties” for families, property owners, and the federal government.²⁷ The proposed rule is only the latest in a slew of executive branch actions that represent a brazen and cruel attack on immigrant families and those living in poverty.²⁸ But

¹⁹ Housing and Community Development Act of 1987, Pub. L. No. 100–242, § 164, 101 Stat. 1815 (1987).

²⁰ H.R. REP. NO. 100–122(I), at 49–50.

²¹ *Id.* at 49.

²² *Id.* at 50.

²³ 60 Fed. Reg. 14,820 (Mar. 20, 1995).

²⁴ *Id.* at 14,822.

²⁵ *Id.* at 14,816. The rule has had some technical revisions, but the substance of the regulations regarding housing assistance for mixed-status families remains unchanged. *See* 24 C.F.R. §§ 5.500–5.528.

²⁶ Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104–208, § 572, 110 Stat. 3009 (1996).

²⁷ H.R. REP. NO. 100–122(I), at 49.

²⁸ *See, e.g.*, Exec. Order No. 13780, 82 Fed. Reg. 13,209 (2017) (the “Travel Ban”); Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248); Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019) (restrictions on bond for asylum seekers); Matter of A-B-, 27

regardless of an agency’s preferred policies of the moment, it may not override the wishes of Congress,²⁹ especially where Congressional rejection of the policy is so clear. We urge HUD not to implement a plainly unlawful rule in the executive branch’s effort to further an anti-immigrant agenda.

The proposed rule will harm hundreds of thousands of individuals—including U.S. citizen children and family members, and the aging U.S. citizen population—by separating families, increasing families’ financial burdens, and causing housing insecurity and homelessness.

The proposed rule will create enormous hardships on mixed-status families, forcing them to either lose their housing or split up their families. HUD acknowledges the terrible effects of its proposed rule, even calling the option for a family to split up “a ruthless one.”³⁰ In its own impact analysis, the agency wrote that it “expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”³¹ Moreover, the analysis states that “[e]ven if a parent is willing to sacrifice him- or herself for the sake of the household’s continuing receipt of housing assistance; [sic] a household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving together.”³² HUD estimates that, at most, 25 percent of families will need to be formally evicted.³³ Essentially, HUD recognizes that family separation is so terrible that it assumes most of these families will opt for housing insecurity and potential homelessness.

Moreover, most of the people who would become housing insecure as a result of the proposed rule are eligible for the financial assistance that would be effectively denied to them. The majority of mixed-status households have three eligible members and just one ineligible member.³⁴ In fact, HUD’s *own* analysis indicates that 71 percent of the people who will lose housing as a result of the proposed rule are U.S. citizens or have eligible immigration status, and thus are themselves entitled to financial housing assistance.³⁵

The families who are forced to leave subsidized housing will face both sizable physical and psychological challenges. Research suggests that even the threat of eviction leads to

I&N Dec. 316 (A.G. 2018) (restrictions on bases for asylum); Yeganeh Torbati, *Exclusive: Trump Administration Proposal Would Make it Easier to Deport Immigrants Who Use Public Benefits*, REUTERS (May 3, 2019), <https://www.reuters.com/article/us-usa-immigration-benefits-exclusive/exclusive-trump-administration-proposal-would-make-it-easier-to-deport-immigrants-who-use-public-benefits-idUSKCN1S91UR> (noting that a draft deportation policy is “part of an effort to restrict immigration by low-income people”); The Southern Poverty Law Center et al., Comment Letter on Proposed Rule: Inadmissibility on Public Charge Grounds (Feb. 5, 2019), <https://www.regulations.gov/document?D=USCIS-2010-0012-54089>.

²⁹ See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952) (holding that an executive decision should “direct that a congressional policy be executed in a manner prescribed by Congress,” not “that a presidential policy be executed in a manner prescribed by the President”).

³⁰ Impact Analysis at 16.

³¹ *Id.* at 7.

³² *Id.* at 9.

³³ *Id.* at 15.

³⁴ *Id.*

³⁵ *Id.* at 6.

depression, anxiety, psychological distress, poor self-reported health, and high blood pressure.³⁶ One study even warned of “the potential significance of housing loss as a crisis that can precipitate suicide.”³⁷ The effects of eviction—poor quality housing, overcrowding, and homelessness—also lead to negative health outcomes.³⁸

Further, regardless of whether a family is formally evicted or forced out because of the looming threat of eviction, the family will face severe, unnecessary burdens. According to one study, “severely housing cost-burdened households”—that is, families who have to put a high percentage of their income toward housing—“spent almost \$650 less on non-housing expenses each month than bottom-quartile households that are not cost burdened.”³⁹ This means these families have less access to household and health necessities. For example, severely housing cost-burdened families spend \$190 less on food and 70 percent less on health care than their non-cost-burdened counterparts.⁴⁰ HUD also estimates that these already-cost-burdened families will have to pay \$500 per household in moving costs as a result of the proposed rule.⁴¹

Effects on communities of color

Eviction practices are already damaging communities in the South, and this proposal will further the epidemic among populations served by the SPLC. Evictions routinely target communities of color, and the proposed rule will no doubt do the same. For instance, one study found that 9 of the 10 highest-evicting large U.S. cities are located in the South, in cities that are at least 30 percent African-American.⁴² Further, 14 of the 15 highest-evicting mid-sized cities are in the South.⁴³ Eviction laws are routinely abused in Southern states. In Mississippi, tenant-hostile laws help landlords target low-income renters for evictions.⁴⁴ The Atlanta metropolitan area has a major housing insecurity crisis, in which predominantly black communities are most affected, due in part to eviction laws and the displacement that comes with the power landlords

³⁶ Hugo Vásquez-Vera et al., *The Threat of Home Eviction and its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. MED. 199, 205 (2017).

³⁷ Katherine A. Fowler et al., *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings from 16 National Violent Death Reporting System States, 2005-2010*, 105 AM. J. OF PUB. HEALTH 311, 315 (2015).

³⁸ Allison Bovell-Ammo and Megan Sandel, *The Hidden Health Crisis of Eviction*, B.U. SCH. OF PUB. HEALTH (Oct. 5, 2018), <http://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction>.

³⁹ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING 2018*, at 31 (2018).

⁴⁰ *Id.*

⁴¹ Impact Analysis at 14.

⁴² Max Blau, *Black Southerners Are Bearing the Brunt of America’s Eviction Epidemic*, PEW (Jan. 18, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/01/18/black-southerners-are-bearing-the-brunt-of-americas-eviction-epidemic>.

⁴³ *Eviction Rankings: Top Evicting Mid-Size Cities in the United States*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=1&d=evictionRate> (last visited Jun. 6, 2019).

⁴⁴ Erica Hensley, *‘System Doesn’t Work for Anybody’: Repeat Evictions Take Toll on Tenants, Courts and Landlords*, MISS. TODAY (Sept. 28, 2018), <https://mississippitoday.org/2018/09/28/system-doesnt-work-for-anybody-repeat-evictions-take-toll-on-tenants-justice-courts-and-landlords>.

hold over tenants.⁴⁵ 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.⁴⁶ This left many people, including lawful residents, unable to receive utility service.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.”⁵⁰ 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.”⁵¹ 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.⁵² That includes nearly 19,000 households and

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

⁴⁶ Azadeh Shahshahani, *Discrimination Via Public Utility Monopoly in LaGrange*, JURIST (Oct. 24, 2017), <https://www.jurist.org/commentary/2017/10/azadeh-shahshahani-utility-discrimination>.

⁴⁷ *Id.*

⁴⁸ *Renter Cost Burdens by Race and Ethnicity (1B)*, JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV. (2017), https://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race.

⁴⁹ 42 U.S.C. § 3068(e)(5).

⁵⁰ 24 C.F.R. § 5.152.

⁵¹ *Id.*

⁵² Impact Analysis at 8.

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

Children make up 73 percent of the eligible members in these 25,000 households.⁵⁶ 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.⁵⁷

The effects on children will be devastating, regardless of whether families choose to leave financial housing assistance or separate. As already discussed, housing security is particularly important for children. HUD acknowledges in its impact analysis that the proposed rule will have an “adverse impact . . . on eligible children.”⁵⁸ Children who experience housing insecurity are more likely to experience health issues.⁵⁹ Conversely, children who live in subsidized housing are more likely to be food secure and less likely to be seriously underweight.⁶⁰ Overall, these children are 35 percent more likely to be classified as a “well” child than if they did not receive financial housing assistance.⁶¹ Children who experience housing insecurity also have worse academic and social outcomes than their peers, leading to lower adult educational attainment.⁶² Housing insecure children score lower on standardized tests than their housing secure peers, and they are also far less likely to graduate from high school.⁶³ Those who do graduate from high school are more likely than housing secure peers to receive an associate's degree, rather than a bachelor's degree,⁶⁴ and those who attend college are less likely to finish.⁶⁵ By contrast, children whose parents use financial assistance to move out of high-poverty neighborhoods when they are young have better long-term outcomes than children who stay in lower-poverty areas.⁶⁶

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 6.

⁵⁷ HUD's analysis includes only mixed-status families currently receiving financial housing assistance. However, many more families could be affected if they ever need such assistance. An estimated 5.1 million children—4.1 million of whom are U.S. citizens—live with at least one undocumented parent. RANDY CAPPS ET AL., MIGRATION POL'Y INST., A PROFILE OF U.S. CHILDREN WITH UNAUTHORIZED IMMIGRANT PARENTS 1 (2016).

⁵⁸ Impact Analysis at 17.

⁵⁹ Diana Becker Cutts et al., *US Housing Insecurity and the Health of Very Young Children*, 101 AM. J. OF PUB. HEALTH 1508, 1512 (2011).

⁶⁰ CHILDREN'S HEALTHWATCH, RX FOR HUNGER: AFFORDABLE HOUSING 2 (2009).

⁶¹ *Id.* at 4.

⁶² Heather Sandstrom and Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis 6* (Urb. Inst., Low-Income Working Families Discussion Paper 3, 2013), available at <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

⁶³ MINN. OFFICE OF HIGHER ED., THE IMPACT OF HOUSING INSECURITY ON EDUCATIONAL OUTCOMES 1 (2018).

⁶⁴ *Id.*

⁶⁵ *Id.* at 2.

⁶⁶ Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AM. ECON. REV. 855, 859–60 (2016).

Homeless children have an even greater likelihood of struggling with cognitive and mental health problems, physical health problems, and poor school performance.⁶⁷ A child who experiences homelessness is 87 percent more likely to stop attending school.⁶⁸ 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.⁶⁹ Additionally, housing insecurity leads to a greater prevalence of child maltreatment.⁷⁰ Homeless children are especially vulnerable and face higher rates of sexual exploitation.⁷¹ Homeless LGBTQ children are particularly at risk, as they are 7.4 times more likely to experience sexual violence than their peers.⁷² 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.”⁷³

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.”⁷⁴ 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”⁷⁵ for the government to force families to separate—or as HUD itself describes it, “ruthless.”⁷⁶

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.⁷⁷ These requirements will pose a major

⁶⁷ 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>.

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

⁶⁹ 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>.

⁷⁰ Vásquez-Vera, *supra* note 36.

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

⁷² *Id.*

⁷³ Cutts, *supra* note 59, at 1512.

⁷⁴ Impact Analysis at 9.

⁷⁵ 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/>.

⁷⁶ Impact Analysis at 16.

⁷⁷ *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.⁷⁸

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.⁷⁹ As many as 32 percent of women do not have proof-of-citizenship documentation that indicates their current name.⁸⁰ Twenty-five percent of African-American citizens and 18 percent of citizens over the age of 65 do not have a photo ID.⁸¹

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.⁸² Additionally, strict voter identification laws have “disproportionately disenfranchise[d] minority communities.”⁸³ 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”⁸⁴ and by a Congressional committee as an “injustice”⁸⁵—will both cause extreme suffering and severely damage health, educational, and quality-of-life outcomes in the affected communities.

The proposed rule will increase budgetary strain on HUD, and it will force states and municipalities, through their taxpayers, to assume responsibility for growing financial crises of homelessness and poverty.

⁷⁸ BRENNAN CTR. FOR JUSTICE, N.Y.U. SCH. OF LAW, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS’ POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (2006).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 3.

⁸² U.S. GOV. ACCOUNTABILITY OFFICE, MEDICAID: STATES REPORTED THAT CITIZENSHIP DOCUMENTATION REQUIREMENT RESULTED IN ENROLLMENT DECLINES FOR ELIGIBLE CITIZENS AND POSED ADMINISTRATIVE BURDENS (2007).

⁸³ Dan Hopkins, *What We Know About Voter ID Laws*, FIVETHIRTYEIGHT (Aug. 21, 2018), <https://fivethirtyeight.com/features/what-we-know-about-voter-id-laws>.

⁸⁴ Impact Analysis at 16.

⁸⁵ H.R. REP. NO. 100–122(I), at 49.

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.⁸⁶

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.⁸⁷ HUD also expects to spend between \$3.3 million and \$4.4 million in eviction costs,⁸⁸ 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.⁸⁹ 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.”⁹⁰ Ironically, HUD claims a “benefit” of the rule is that it will help the agency “reduce unnecessary regulatory burdens,”⁹¹ 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.⁹²

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

⁸⁶ Impact Analysis at 10.

⁸⁷ *Id.* at 12.

⁸⁸ *Id.* at 15.

⁸⁹ *Id.* at 17.

⁹⁰ *Id.* at 3.

⁹¹ *Id.* at 10.

⁹² 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.⁹³ This amount includes responses to health and safety crises, such as payment for emergency medical and psychiatric care. The SPLC opposes carceral responses to homelessness, but some of the communities in the study also spent money on arresting homeless individuals “for nonviolent offenses such as trespassing, public intoxication or sleeping in parks,” and on their subsequent jail stays.⁹⁴

Additionally, the costs will not be limited to homelessness. Because housing insecurity causes worse health and educational outcomes, as well as increased intergenerational poverty, states and municipalities will likely need to provide additional public services. This will hurt not only those immediately impacted by the proposed rule, but also those who will subsequently be affected by the housing insecurity and poverty that the rule creates. Affected families will have significantly diminished spending power, damaging local economies and creating deleterious consequences for broader communities.

Conversely, access to adequate housing has tremendous societal benefits. If HUD were to spend these hundreds of millions of dollars on more affordable housing, individual families would experience more stable, sustainable living environments and neighborhoods would improve. Long-term housing subsidies can reduce homelessness by 50 percent and cut costly shelter stays by 75 percent.⁹⁵ Further, affordable housing increases access to medical care while decreasing Medicaid costs,⁹⁶ and HUD investments can create more than half a million jobs in a given year.⁹⁷ One study found that housing voucher programs “significantly reduced homelessness [and] crowding, . . . increased housing mobility, while reducing the number of subsequent moves, and resulted in small improvements in neighborhood quality.”⁹⁸ By the overwhelming weight of the research and HUD’s own calculations, the proposed rule makes little economic sense. HUD should invest in communities, rather than propose policies that unnecessarily burden state and local governments.

If promulgated, the proposed rule will run contrary to Congressional intent by forcing families to suffer the “injustice” of deciding whether to separate or fall into housing insecurity and potential homelessness. It will cause public health crises and increase intergenerational poverty, with particularly devastating effects on children, immigrant communities, the aging population, communities of color, and low-income families. These harms will cost HUD hundreds of millions of dollars per year, with state and local governments bearing additional cost burdens.

⁹³ Kate Santich, *Cost of Homelessness in Central Florida? \$31k Per Person*, ORLANDO SENTINEL (May 21, 2014), <https://www.orlandosentinel.com/news/os-xpm-2014-05-21-os-cost-of-homelessness-orlando-20140521-story.html>.

⁹⁴ *Id.*

⁹⁵ CAMPAIGN FOR HOUSING & COMMUNITY DEV. FUNDING, *A PLACE TO CALL HOME 5* (2017), available at <https://nlhc.org/sites/default/files/A-Place-To-Call-Home.pdf>.

⁹⁶ *Id.* at 6, 9.

⁹⁷ *Id.* at 10.

⁹⁸ Michelle Wood et al., *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, 19 HOUSING POL’Y DEBATE 367, 367 (2008).

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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