

**Comments on Department of Housing and Urban Development's
Proposed Rule Regarding Verification of Eligible Status**

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

**RE: HUD Proposed Rule on Verification of Eligible Status
Docket No. FR-6124-P-01**

To Whom It May Concern:

Lawyers for Civil Rights (LCR) respectfully submits these comments in strong opposition to the U.S. Department of Housing and Urban Development's (HUD) Proposed Rule on Verification of Eligible Status (hereinafter, the "Proposed Rule"). If adopted, the Proposed Rule will cause thousands of families of mixed immigration status to lose access to affordable housing, destabilizing these families and creating long-term consequences particularly for affected children.

For more than 50 years, LCR has fought discrimination and sought equal opportunity for people of color and immigrants in Massachusetts through creative and courageous legal action, outreach, and advocacy in collaboration with law firms and community partners. Since 2003, LCR has provided on-site free legal assistance to immigrant and refugee patients at the Massachusetts General Hospital's HealthCare Center in Chelsea as part of an innovative Medical-Legal Partnership. We work closely with the communities that will be most directly affected by the Proposed Rule, and we know the devastation that it will cause to families and children, many of whom are U.S. citizens.

I. Summary of the Proposed Rule

The federal housing programs created decades ago have been carefully balanced to ensure that access is fair and nondiscriminatory. Currently, although only U.S. citizens, refugees, asylees, parolees, and permanent residents are unconditionally eligible to apply for housing assistance, they may reside in federally assisted housing with ineligible household members—as part of a mixed status household—as long as at least one member of the household is eligible. The amount of assistance for these mixed status households is pro-rated based upon the number of eligible individuals. Mixed status households thus pay more rent out of pocket than other families in similar units.¹ The current system allows mixed status families to enjoy the benefit of affordable housing without allocating federal funds to those who are ineligible.

¹ D. Yentel and K. Ng, "Opinion: Trump Admin's Latest Anti-Immigrant Proposal Would Harm Thousands of Legal Residents," May 23, 2019, available at <https://citylimits.org/2019/05/23/opinion-trump-admins-latest-anti-immigrant-proposal-would-harm-thousands-of-legal-residents/>.

The Proposed Rule alters this careful balance. As currently written, the Proposed Rule would require a verification of the immigration status of all recipients of federal housing assistance under the age of 62. If a member of a household is declared ineligible for federal assistance, and he or she is not a nonfamily member—for example, a live-in caregiver or foster child—that person will have a minimum of 18 months to vacate his or her unit. Ineligible individuals will also no longer be allowed to serve as the leaseholder, even in the case of mixed-status families. The result will be that only households where every member has immigration status will be eligible to apply for vouchers or reside in a subsidized federal housing unit.

II. The Proposed Rule Will Endanger Family Stability Without Furthering HUD’s Stated Rationale.

LCR is deeply concerned that the Proposed Rule—put forth without justification or necessity—will endanger family stability, and render children homeless. The Proposed Rule amounts to a draconian eviction plan that will uproot tenants in good standing who have complied with every provision of their lease, who have timely paid their rent, and who have lived in the same unit of federal housing for many years.

The Proposed Rule is the latest in a series of administrative actions that seek to deprive both documented and undocumented immigrants of every form of public assistance. In so doing, the Proposed Rule advances a dangerous and erroneous narrative that paints immigrants as a burden on taxpayers, despite significant evidence to the contrary. Like the Department of Homeland Security’s attempt to restrict eligibility for immigration relief based upon use of public benefits, this national eviction is counter-productive, ill-conceived, and inhumane.

Attempting to justify the eviction of an estimated 31,811 undocumented members of mixed status families, HUD claims that the Proposed Rule will allow U.S. citizens on federal housing waiting lists to move into the soon-to-be vacant units.² However, given the extremely long waiting lists for federal housing assistance, the actual number of purported beneficiaries is minimal. As of 2012, the last time national waiting list data was collected, there were 1.64 million families on the waiting lists for public housing and 2.76 million families on the waiting list for Section 8 vouchers.³ Strikingly, those numbers do not even take into account the fact that waiting lists in many areas have been closed to new applicants for more than a year “due to overwhelming demand.”⁴ Researchers estimate that 2 million families are waiting for public housing units and 9.5 million

² Sylvan Lane, “Carson on HUD eviction plan: ‘You take care of our own first.’” The Hill, May 21, 2019.

³ Public and Affordable Housing Research Corporation, Housing Agency Waiting Lists and the Demand for Housing Assistance, HAI Group, at 3 (Feb. 2016), available at <https://www.housingcenter.com/wp-content/uploads/2017/11/waiting-list-spotlight.pdf> (noting that only 80% of housing agencies reported their data).

⁴ Id. at 3 (observing that approximately 48% of housing choice voucher waiting list and 6% of public housing waiting lists were “closed to new applicants” and estimating that “nearly three times as many families would be waiting” per housing choice voucher and 6% more families would be waiting for each public housing unit if a “significant number of housing agency waiting lists were not closed.”)

families are waiting for vouchers.⁵ In light of those statistics, any purported benefit to U.S. citizens through the implementation of the HUD Proposed Rule would be almost imperceptible.

III. The Proposed Rule Will Increase the Number of Homeless Families in the United States.

According to HUD records, there are approximately 25,000 mixed households in the United States where at least one member is ineligible for federal housing assistance.⁶ Accordingly, the Proposed Rule will likely affect more than 100,000 individuals.⁷ Further, implementation of the Proposed Rule would disproportionately affect women, the elderly, low-income individuals, and people of color, as these groups are less likely to have readily available proof of citizenship, photo identification, or documentation reflecting their current information.⁸

According to its own Impact Analysis, HUD has predicted that most mixed households will leave assisted housing as a result of the Proposed Rule. In fact, HUD expects that the fear of family separation will lead to a “prompt evacuation” of most mixed households.⁹ Given the scarcity of affordable housing throughout the United States, ineligible mixed-status households will likely become homeless, displacing the burden for their shelter onto municipalities and states. In an effort to mask the likely outcome of its proposal, HUD suggests that mixed-status families can simply ask ineligible members to leave, or evicted families can move into substitute housing within an affordable range.¹⁰ Neither scenario is plausible.

Family members cannot and will not evict one another. Indeed, such a “ruthless” suggestion—to use HUD’s own language—becomes even more untenable considering that the vast majority of ineligible family members will be the parents of U.S. citizen children.¹¹ Further, the idea that families who are already unable to afford housing—such that they are reliant on HUD in the first place—can simply move to a more affordable residence ignores the reality of the rapidly rising cost of rental housing. Metropolitan areas everywhere are losing affordable rental units. Nationwide, in 2017, only 37 rental homes were affordable and available for every 100 extremely low-income rental households.¹² That translates into a national shortfall of seven million rental homes for households with incomes at or below 30% of the area median income or federal poverty

⁵ Id.

⁶ HUD’s Regulatory Impact Analysis, Housing and Community Development Act of 1980: Verification of Eligible Status, Proposed Rule, Docket No.FR-6124-P-01 (hereinafter, “Regulatory Impact Analysis”), at 6.

⁷ Id.

⁸ Brennan Center for Justice at NYU School of Law, Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification, Voting Rights and Election Series, at 2-3 (Nov. 2006), available at https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

⁹ Regulatory Impact Analysis, at 7.

¹⁰ Id.

¹¹ Id. at 16.

¹² National Low Income Housing Coalition, The Gap: A Shortage of Affordable Homes, at 3 (Mar. 20, 2019), available at <https://www.ncsha.org/resource/national-low-income-housing-coalition-the-gap-a-shortage-of-affordable-homes-2019/>.

guidelines. As HUD’s own analysis suggests, the Proposed Rule will result in the unprecedented displacement of thousands of families with children, many of whom will be rendered homeless.¹³

IV. In High Cost States like Massachusetts, the Proposed Rule will Displace Families into Emergency Shelters.

If adopted, the Proposed Rule will increase the already large number of homeless families in Massachusetts—one of the four states where more than half of the nation’s homeless people in families with children reside.¹⁴ In 2018, in Massachusetts, 44 out of every 10,000 persons experienced homelessness.¹⁵ Further, between 2017 and 2018, Massachusetts saw the largest increase in the country in homelessness among people in families with children.¹⁶ This trend will only worsen if mixed status households are evicted from subsidized federal housing.

It is unreasonable to expect that mixed-status families in Massachusetts will be able to relocate to alternative market rate housing if they are forced to leave federal housing. Massachusetts is now the third most expensive state in the nation, eclipsing all others except California and Hawaii.¹⁷ A 2019 report issued by the National Low Income Housing Coalition estimated that a renter in Massachusetts would have to earn \$33.81 an hour in order to spend 30% of their income on a rented two bedroom apartment; but with a state minimum wage of \$12 an hour, the renter would need to work 91 hours a week to afford a modest one-bedroom unit and 113 hours a week to afford a two-bedroom unit.¹⁸

If the Proposed Rule takes effect, there is little doubt that mixed status families will be forced to rely on emergency assistance shelters. However, when these shelters are full, families are placed in more expensive motels and hotels, placing additional financial burdens on ill-equipped municipalities and states. To that end, the Proposed Rule will injure not only displaced mixed status families, but the economic health of communities already struggling with growing populations and an insufficient housing stock.

¹³ Regulatory Impact Analysis, supra, at 4, 7 (observing that “displaced households” will have to “search for a new apartment, make a deposit on a new apartment, and then move to the new apartment” as HUD “assumes that most mixed households will leave HUD’s assisted housing as a result of this rule.”).

¹⁴ U.S. Department of Housing and Urban Development, Office of Community Planning and Development, The 2018 Annual Homeless Assessment Report (AHAR) to Congress, at 38 (Dec. 2018), available at <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

¹⁵ Id.

¹⁶ Id.

¹⁷ National Low-Income Housing Coalition, Out of Reach, at 15 (2019), available at https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

¹⁸ Id. at 13, MA-119.

V. HUD has Chosen to Ignore the Long-Term Social Consequences of the Proposed Rule.

The impact of wide-scale eviction will have shattering long-term effects. For example, a considerable body of research demonstrates that evicting families will increase health care costs. In Massachusetts, the healthcare costs associated with a homeless individual exceed that of a housed individual by more than \$20,000.¹⁹ According to a recent study, housing instability is expected to result in \$111 billion in avoidable healthcare costs over the next ten years.²⁰

The Proposed Rule will be particularly harmful to children, subjecting them to stressful conditions that will cause lasting mental, emotional, and physical health problems. Eviction, perpetual mobility, overcrowding, and exposure to adult distress all have significant negative effects on child development.²¹

Housing instability also has hugely negative effects on a child's academic achievement. Families experiencing homelessness often end up in emergency shelters far from their home communities. As a result, schooling can be delayed or interrupted. Researchers have reported higher rates of educational problems for homeless children, specifically the increased need for special education and grade repetition.²²

All these devastating and long-term consequences are utterly disregarded by HUD.

VI. The Proposed Rule Would Be More Costly And Burdensome.

The implementation of the Proposed Rule will entail a wide variety of additional costs. Most significant will be the increased cost of federal assistance to the families who will replace those evicted. Due to proration, mixed status families pay more out-of-pocket rent than similarly-situated households. According to HUD's own regulatory analysis, the aggregate increase in the HUD budget will range from \$193 million to \$227 million each year.

There will be extensive time-consuming use of the staff of local housing authorities in order to screen the current recipients of federal housing assistance, and to carefully review complex legal documents related to immigration status. Currently, over 9 million individuals use federal housing programs. As per HUD's own regulatory analysis, only 31,811 individuals—0.003%—are likely to be deemed ineligible for housing benefits. Yet the proposed rule would require new documentation from every single federal housing beneficiary. New forms will be generated to collect this information. Notice requirements will also generate new documents. Eviction

¹⁹ Boston Bar Association Task Force on the Civil Right to Counsel Housing, The Importance of Representation in Eviction Cases and Homelessness Prevention: A Report on the BBA Civil Right to Counsel Housing Pilots, at Appendix A, p.4 (Mar. 2012), available at: <https://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> (hereinafter, "BBA Report").

²⁰ Población, A. et al, Stable Homes Make Healthy Families, The Children's Health Watch (2017).

²¹ BBA Report, supra, at Appendix A, p.4.

²² Id.

procedures will require more lawyers to be retained by state and federal housing authorities. HUD has utterly failed to explain how the supposed benefits of the Proposed Rule will offset or justify these unnecessary costs.

Conclusion

Based on the devastating effects of this Proposed Rule, LCR respectfully requests that HUD withdraw its ill-advised proposal and abandon its unjustified efforts to screen and evict mixed immigrant status families who receive federal housing assistance.