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July 9, 2019

**VIA ELECTRONIC SUBMISSION**

Office of General Counsel, Rules Docket Clerk  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 10276  
Washington, DC 20410-0500

Re: HUD Docket No. FR-6124-P-01, RIN 2501-AD89, Comments in Response to Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status

Dear Sir/Madam:

The National Center for Law and Economic Justice (“NCLEJ”) provides comments in response to the Department of Housing and Urban Development’s (“HUD”) Notice of Proposed Rulemaking (the “proposed rule”), published in the Federal Register on May 10, 2019.<sup>1</sup> We strongly oppose the proposed changes regarding the “verification of eligible status” rule that would effectively disenroll and prohibit mixed-status families from participating in HUD programs covered by Section 214 of the Housing and Community Development Act of 1980 (“Section 214”).<sup>2</sup> We also oppose the proposed new documentary proof of citizenship requirements for families seeking federal housing assistance. NCLEJ urges HUD to withdraw the rule in its entirety and to continue implementing its long-standing regulations.

Our organization advances economic justice and preserves fundamental rights for low-income families, individuals, communities, and organizations nationwide through impact litigation, policy advocacy, and support for grassroots organizing. We work to ensure that public benefits programs, such as Medicaid and the Supplemental Nutrition Assistance Program (“SNAP,” more commonly known as Food Stamps), and HUD’s federal housing programs operate efficiently and fairly to serve those who are eligible and in need of help. NCLEJ also protects the rights of persons with disabilities by ensuring that federal, state, and local social services agencies afford them an opportunity to participate meaningfully in benefits programs and receive accommodations for their disabilities.

The proposed rule would harm many of the constituencies NCLEJ represents. The rule threatens to undermine the well-being of low-income U.S. citizens, immigrants, and their families by barring access to critical federal housing assistance. The rule would force mixed-status families to make an impossible decision—either break up to allow eligible family

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<sup>1</sup> 84 Fed. Reg. 20589-95

<sup>2</sup> 42 U.S.C.A. § 1436a

members to continue receiving public housing assistance or forgo the subsidies so that the family can stay together. The rule would also decrease the quality of federal housing assistance as well as the number of families that HUD can serve. If implemented, the rule's new burdensome proof of citizenship requirements will disproportionately affect persons with disabilities who rely on federal housing assistance for shelter and who lack the discretionary income to obtain what could be costly, newly required documentation.

HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide because it purportedly amends the regulations to be more in line with the purpose of Section 214.<sup>3</sup> However, NCLEJ, along with many other social justice advocates and organizations, contends that the proposed rule is only one of the current administration's most recent tactics in a broader coordinated attack on immigrant families.<sup>4</sup> Blaming low-income immigrant families will not fix the ongoing nationwide housing crisis. Indeed, HUD's own analysis of the proposed rule concludes that fewer, not more, families are likely to receive assistance as a result of the rule.<sup>5</sup> The onerous documentation requirements in the proposed rule will create more, not fewer, obstacles for low-income families who rely on Section 214 programs as a lifeline. At the crux of the housing crisis is the lack of sufficient funding to ensure that every individual, regardless of immigration status or disability, has access to one of the most basic needs and human rights—shelter, a safe place to call home.

### **I. The Proposed Rule Conflicts with the Purpose of Section 214 and Sets Aside Congressional Intent**

The proposed rule conflicts with the congressional mandate of Section 214 to provide prorated assistance to mixed-status families. Mixed-status families are households that include both members who are eligible and ineligible for housing assistance based on their immigration status. With the proposed rule, HUD claims to revise its regulations “into greater alignment with the wording and purpose of Section 214,” namely by barring mixed-status families from receiving assistance. Despite HUD's inability to point to any statutory language to support its claim, HUD insists that Section 214 prohibits the long-term receipt of prorated assistance by mixed-status families.

However, the plain language of Section 214 clearly conveys that Congress intended to ensure that individuals with eligible immigration status would receive assistance while keeping mixed-status families together in the same home. For example, Section 214 states that “[i]f the

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<sup>3</sup> 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](https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.c6fd40565b83).

<sup>4</sup> See, e.g., NAT'L IMMIGRATION L. CTR., *Understanding Trump's Muslim Bans* (updated Mar. 8, 2019), <https://www.nilc.org/issues/immigration-enforcement/understanding-the-muslim-bans/>; Michael D. Shear & Emily Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. TIMES (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>; Dan Lamothe, *Pentagon Will Shift an Additional \$1.5 Billion to Help Fund Trump's Border Wall*, WASH. POST (May 10, 2019), [https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm\\_term=.37360e7cda10](https://www.washingtonpost.com/national-security/2019/05/10/pentagon-will-shift-an-additional-billion-help-fund-trumps-border-wall/?utm_term=.37360e7cda10); REUTERS, *Exclusive: Trump Administration Proposal Would Make It Easier to Deport Immigrants Who Use Public Benefits*, N.Y. TIMES (May 3, 2019), <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html>.

<sup>5</sup> HUD, *Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980*, Docket No. FR-6124-P-01 (Apr. 15, 2019).

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 . . . .” (emphasis added).<sup>6</sup> In addition, the law explicitly permits housing authorities to choose not to affirmatively establish ineligibility. Section 214 states that “[a] public housing agency . . . may . . . elect not to affirmatively establish and verify eligibility before providing financial assistance.”<sup>7</sup> In proposing changes to the current regulations, HUD incorrectly interprets Congress’ language of “shall be prorated” to mean “may be prorated for some period of time.”

Furthermore, the legislative history of Section 214 bolsters the straightforward reading of the statute. Section 214 was initially passed in 1980. In 1988, Congress included a provision by which mixed-status families who had been receiving full subsidy prior to the statute’s passage could remain in Section 214-covered housing and avoid family breakup.<sup>8</sup> But in its proposed rule, HUD distorts that provision, which provides for temporarily grandfathered assistance, to claim that Congress only intended for prorated assistance to be provided for a limited time. However, Congress only added the proration provisions later, in 1996.<sup>9</sup> With each of these updates, Congress has consistently guaranteed that scarce federal subsidy would be provided for eligible immigrants and citizens while preserving the integrity of mixed-status families. HUD’s new interpretation thereby ignores the plain language and the history of the statute by introducing the proposed rule.

## **II. The Proposed Rule Contravenes Federal Anti-Discrimination Law that Requires HUD to Affirmatively Further Fair Housing**

First, the proposed rule directly violates HUD’s statutory obligation to affirmatively further fair housing. The federal Fair Housing Act (“FHA”) mandates that the HUD Secretary shall “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of” the FHA.<sup>10</sup> In its own 2015 regulations, HUD defined “affirmatively further fair housing” to mean “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.”<sup>11</sup> This obligation to affirmatively further fair housing also includes “fostering and maintaining compliance with civil rights and fair housing laws.”<sup>12</sup> The proposed rule does nothing to advance fair housing aims and does not comply with other civil rights laws. Instead, it seeks to do the exact opposite by denying housing opportunities to thousands of *eligible* immigrant and mixed-status families, using immigration status as a pretext for discriminating against individuals based on their race and national origin.

The rule fails to consider that many immigrants disproportionately live in high-cost housing areas and pay more for housing than U.S. citizens. Immigrants and their families also

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<sup>6</sup> 42 U.S.C. § 1436a(b)(2).

<sup>7</sup> 42 U.S.C. § 1436a(i)(2)(A).

<sup>8</sup> Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

<sup>9</sup> Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

<sup>10</sup> 42 U.S.C.A. § 3608(e)(5) (West 2019).

<sup>11</sup> 24 C.F.R. § 5.152 (definition of “Affirmatively furthering fair housing”).

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

face additional barriers in finding affordable housing.<sup>13</sup> Compared to U.S. citizens, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing.<sup>14</sup>

Many of these additional burdens are attributable to the fact that immigrants disproportionately live in states with high housing costs.<sup>15</sup> For example, California—the state with the largest immigrant population<sup>16</sup>—has eight of the ten highest rental cost metropolitan counties in the country.<sup>17</sup> In New York, one in five residents is an immigrant, while one in six is a native-born U.S. citizen with at least one immigrant parent.<sup>18</sup> The New York City Housing Authority has reported that 11,400 New York residents would lose their pro-rated housing assistance, 43 percent of whom would be children.<sup>19</sup> The proposed rule will introduce additional burdens to immigrant families that already face significant hurdles in securing affordable housing, placing thousands of families at risk of homelessness.

Furthermore, by eliminating the ability of mixed-status families to receive prorated assistance on a permanent basis, the proposed rule robs eligible U.S. citizen children of housing subsidies because they have parents with ineligible non-citizen status. Section 214 already limits access to federally subsidized housing programs to U.S. citizens and a specific list of non-citizen categories.<sup>20</sup> Nearly all of the children in mixed-status families who are receiving HUD assistance covered by Section 214 are U.S. citizens and lawful permanent residents (“LPR”) who live with parents or other adults without eligible immigration status. And HUD’s statistics show that 70% of mixed-status families are composed of eligible children and ineligible parents.<sup>21</sup> There are over 38,000 U.S. citizen and otherwise eligible children in these families, and over 55,000 eligible children in mixed-status families overall.<sup>22</sup> Since these children lack the legal capacity to sign leases themselves, the adult heads of household, including those who do not receive assistance, must sign these contracts on behalf of their family. By prohibiting the

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<sup>13</sup> See ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA* (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

<sup>14</sup> Eileen Diza McConnell, *Who Has Housing Affordability Problems? Disparities in Housing Cost Burden by Race, Nativity and Legal Status in Los Angeles*, 5 *RACE & SOCIAL PROBLEMS* 173, 178 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3784340/pdf/nihms440365.pdf>.

<sup>15</sup> See Matt Levin, *Fleeing War-Torn Homes for Crippling Rents—California Housing Costs Creating Harsh Reality for Refugees*, *CALMATTERS* (July 19, 2018), <https://calmatters.org/articles/refugees-housing-costs-california/>.

<sup>16</sup> Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CTR.: FACTTANK (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

<sup>17</sup> ANDREW AURAND ET AL., NAT’L LOW INCOME HOUSING COALITION, *OUT OF REACH: THE HIGH COST OF HOUSING* 14 (2018), [https://nlihc.org/sites/default/files/oor/OOR\\_2018.pdf](https://nlihc.org/sites/default/files/oor/OOR_2018.pdf).

<sup>18</sup> American Immigration Council, “Immigrants in New York,” (2017), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_new\\_york.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_york.pdf)

<sup>19</sup> New York City Housing Authority (June 26, 2019), <https://twitter.com/NYCHA/status/1143942079908929536>

<sup>20</sup> 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).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

ineligible adults from living in subsidized units, the proposed rule forecloses the possibility of these U.S. citizen and LPR children from receiving any housing assistance under the covered housing programs. This clearly discriminatory policy is wholly inconsistent with HUD's obligation to combat housing discrimination and segregation.

Second, the proposed rule conflicts with federal policy priorities of ending homelessness and federal mandates for states to provide certain assistance and programs to everyone. The proposed rule contravenes the National Affordable Housing Act's edict to ensure that "every American family be able to afford a decent home in a suitable environment."<sup>23</sup> Furthermore, the U.S. Interagency Council on Homelessness ("USICH") has prioritized ending and preventing homelessness among families with children, regardless of immigration status.<sup>24</sup> USICH's mission is to affirmatively remove barriers to housing access, all while acknowledging that "communities [] are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways."<sup>25</sup> The proposed rule directly contradicts this policy goal by erecting additional barriers to accessing affordable housing and by ignoring the diverse needs of mixed-status families.

### **III. The Proposed Rule Will Worsen the Quality of Federal Housing Units and Cut the Number of Families Assisted by HUD Programs**

Secretary Carson stated that HUD has promulgated the proposed rule in an effort to address the waitlist crisis for subsidized housing faced by most Public Housing Authorities nationwide.<sup>26</sup> While it is true that there is a public housing and Section 8 waitlist crisis<sup>27</sup>—the proposed rule will not alleviate and will, instead, worsen this crisis. By HUD's own assessment, the proposed rule will likely lead to a *decrease* in the number of assisted families and a decrease in the quality of the assistance they receive. Replacing the 25,000 mixed-status families currently receiving HUD assistance with households composed entirely of members with eligible immigration statuses would cost HUD *between \$372 million and \$437 million annually*.<sup>28</sup>

To pay for these new costs of the proposed rule,<sup>29</sup> HUD has surmised that the likeliest scenario would be for *HUD to reduce the quantity and quality of assisted housing in response to higher costs*. In this case, the transfer would be from assisted households who experience a

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<sup>23</sup> 42 U.S.C. § 12701.

<sup>24</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018), [https://www.usich.gov/resources/uploads/asset\\_library/Summary\\_of\\_Essential\\_Elements\\_of\\_the\\_Plan.pdf](https://www.usich.gov/resources/uploads/asset_library/Summary_of_Essential_Elements_of_the_Plan.pdf); U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOME, TOGETHER: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 6 (2018), [https://www.usich.gov/resources/uploads/asset\\_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf).

<sup>25</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018).

<sup>26</sup> 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](https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53).

<sup>27</sup> See Alicia Mazzara, CBPP, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Means Long Waits* (Apr. 19, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits>.

<sup>28</sup> 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).

<sup>29</sup> Brakkton Booker, *White House Budget Calls for Deep Cuts to HUD*, NPR (Feb. 13, 2018), <https://www.npr.org/2018/02/13/585255697/white-house-budget-calls-for-deep-cuts-to-hud>.

decline in assistance (in whole or in part) to the replacement households. With part of the budget being redirected to cover the increase in subsidy, there could be fewer households served under the housing choice vouchers program.<sup>30</sup> HUD's own economic analysis shows that the proposed rule will not only fail to achieve its stated goals of addressing the subsidized housing waitlist crisis, but will in fact exacerbate this very issue. The Regulatory Impact Analysis released by HUD makes clear that the proposed rule will not further HUD's mission to "create strong, sustainable, inclusive communities and quality affordable homes for all."<sup>31</sup> The agency also acknowledged in its analysis that the proposed rule could create about \$200 million in new costs and hurt public housing by reducing the "maintenance of the units and possibly [leading to] deterioration of the units that could lead to vacancy."<sup>32</sup>

Furthermore, the proposed rule would lead to a reduction in the quality of federally assisted housing provided by HUD. It is no secret that public housing conditions are deplorable in many parts of this country.<sup>33</sup> Some tenants are living in units that are riddled with mold, rodents, and are in general states of disrepair as a result of decades of underfunding. Experts estimate that there is currently a \$50 billion backlog of desperately needed repairs and, to make matters worse, the Trump administration has proposed to eliminate the federal fund used to make (already insufficient) repairs.<sup>34</sup>

HUD should focus on using its limited funds to address these inhabitable conditions faced by so many of its residents. Instead, HUD has taken the opposite approach which will reduce the quantity of affordable homes on the market.

**a. The Proposed Rule Will Harm 25,000 Immigrant Families, Including Many Citizen Children, Who Rely on Federal Housing Assistance for Shelter**

The proposed rule places 25,000 immigrant families at risk of homelessness, jeopardizing their family and housing stability, both of which are critical to getting families on a pathway to self-sufficiency and better life outcomes.<sup>35</sup> However, since 70% of mixed status families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely that these families will forgo the subsidies to avoid separation. In fact, HUD is banking on this, noting in their regulatory impact analysis that "HUD expects that fear of the

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<sup>30</sup> 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 3 (Apr. 15, 2019) (emphasis added).

<sup>31</sup> HUD, ABOUT HUD, MISSION (last visited May 20, 2019), <https://www.hud.gov/about/mission>.

<sup>32</sup> 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 3 (Apr. 15, 2019).

<sup>33</sup> 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 & Lee Zurik, *Failure to Fix: Mold.Mice. Messes.*, INVESTIGATE TV (2018), <http://www.investigatetv.com/failure-to-fix-mold-mice-messes/>; Holbrook Mohr & 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/>.

<sup>34</sup> Pam Fessler, *Trump Administration Wants to Cut Funding for Public Housing Repairs*, NPR (May 16, 2019), <https://www.npr.org/2019/05/16/723231160/trump-administration-wants-to-cut-funding-for-public-housing-repairs>.

<sup>35</sup> Anna Bailey, "Trump Proposal Would Force 25,000 Families to Split Up or Lose Rental Assistance," Center on Budget and Policy Priorities (June 27, 2019), <https://www.cbpp.org/blog/trump-proposal-would-force-25000-families-to-split-up-or-lose-rental-assistance>

family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”<sup>36</sup> As a result, this rule would effectively evict as many as *108,000 individuals* in mixed-status families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other programs covered by the proposed rule.<sup>37</sup> These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.<sup>38</sup>

#### **b. The Proposed Rule Will Also Harm Millions of U.S. Citizens Who Rely on Federal Housing Assistance for Shelter**

While it is clear that the proposed rule is a direct attack on immigrants and non-citizens in mixed-status households, these families are not the only group that will be harmed if the rule is implemented. The proposed rule creates burdensome procedures, or red tape, that will threaten the housing security of *9.5 million U.S. citizens* currently receiving HUD housing assistance and all future U.S. citizens seeking these benefits. The proposed rule would require all who declare they are U.S. citizens under penalty of perjury to provide evidence of their citizenship, a practice that has proven to be onerous, costly, and unnecessary in other means-tested benefits programs.<sup>39</sup>

Currently, to establish eligibility for accessing Section 214 housing assistance, U.S. citizens need to provide a declaration signed under penalty of perjury of their citizenship or nationality status. The proposed rule would require that these individuals provide additional documentary proof of citizenship or nationality, such as a birth certificate, which can be extremely difficult to obtain for some individuals. One survey from 2006 showed that as many as seven percent of citizens did not have citizen documentation readily available.<sup>40</sup> According the survey:

- at least 12 percent of U.S. citizens earning less than \$25,000 a year do not have proof of citizenship;
- many people who do have documentation have birth certificates or IDs that do not reflect their current name or address, such as people who have changed their name;
- 18 percent of citizens over the age 65 do not have a photo ID; and
- 25 percent of African American citizens lacked a photo ID.

Obtaining such documentation can be particularly difficult for U.S. citizens over the age of 50, citizens of color, citizens with disabilities, and citizens with low incomes. These

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<sup>36</sup> 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 7 (Apr. 15, 2019).

<sup>37</sup> *Id.* at 8.

<sup>38</sup> 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>.

<sup>39</sup> 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); 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>.

<sup>40</sup> Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification, Brennan Center for Justice (Nov. 2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf)

individuals face many challenges in getting this kind of documentation, including difficulties traveling to government offices to replace lost records, paying the appropriate fees to replace and/or access these records, and some may have never been issued a birth certificate in the first place.<sup>41</sup> The proposed documentation requirements will be particularly burdensome for recipients of rental assistance who were formerly homeless, as well as for people experiencing homelessness who could be assisted by Section 214 programs in the future. People experiencing homelessness often lose important documents such as photo identification, birth certificates, and social security cards because they have no safe places to store them.<sup>42</sup> Adding more documentation requirements creates more barriers to housing for those who need it most, and could cause many people who have gained stability through rental assistance to return to homelessness.

Imposing burdensome application and eligibility documentation procedures in benefits programs will inevitably lead to program disenrollment. For example, after Medicaid began implementing a citizenship documentation requirement, half of the 44 states responding to a Government Accountability Office (“GAO”) survey indicated that Medicaid enrollment saw sharp declines because of the citizenship documentation requirement.<sup>43</sup> The GAO also found that states reported increased administrative costs and needing to spend more time providing help to applicants and beneficiaries, increasing their time spent on applications and redeterminations of eligibility.<sup>44</sup>

For individuals who are unable to produce the required documents within the required time period under the proposed rule, they will lose their housing assistance, and many will be evicted from their homes. A significant share could become homeless. The figures above suggest that hundreds of thousands of U.S. citizens could experience these harsh consequences under the proposed rule.

### **c. The Proposed Rule Disproportionately Harms Individuals with Disabilities Who Rely on Federal Housing Assistance for Shelter**

The lack of accessible, affordable housing is a continuing and significant barrier to integrated community living, making it difficult for people with disabilities to move from segregated facilities into the community, and putting many people with disabilities at risk of unnecessary institutionalization or homelessness. People with disabilities comprise a large percentage of the individuals served by HUD programs, including programs covered under the proposed rule. For example, about 1 in 3 households using Section 8 vouchers are headed by a non-elderly person with a disability and about 1 in 5 households living in public housing are headed by a non-elderly person with a disability. The proposed rule may also cause an eligible person with a disability to lose access to much needed housing if he/she relies on the assistance

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<sup>41</sup> 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>.

<sup>42</sup> NAT’L 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](https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf).

<sup>43</sup> 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>.

<sup>44</sup> 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>.

of a non-eligible caretaker family member or co-occupant to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

People with disabilities often have few financial resources and remain among the country's poorest.<sup>45</sup> At the same time, people with disabilities all too often face discrimination when seeking housing.<sup>46</sup> Termination of assistance under the proposed rule could put people with few options at risk, with tremendous cost to their health, earning potential, well-being, and other significant harms.

In addition, many people with disabilities will be at risk of losing assistance because of the proposed rule's new documentation requirements for citizens. People with disabilities often have additional barriers to accessing proof of citizenship and identity. For example, some people with disabilities do not drive and are less likely to have state-issued identification; in 2012, 7.5 percent of people with disabilities lacked a valid ID compared to less than 5 percent of people without disabilities.<sup>47</sup> Furthermore, persons with cognitive and behavioral disabilities may have difficulty meeting additional eligibility requirements because of the nature of their impairments—meeting new deadlines, filling out paperwork, and obtaining third-party verification and documentation can pose a challenge to people with mental health disabilities and could thereby prohibit an otherwise eligible individual from accessing much-needed housing assistance for simply failing to follow overly burdensome procedures.

#### **IV. The Proposed Rule Harms Housing Security and Poses a Danger to Overall Public Health**

Access to stable and affordable housing is a basic platform for family and community health, well-being, and dignity, and our communities thrive when everyone has access to a high quality home. Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. However, this proposed rule change would harm the health of all families—both U.S. citizen and mixed-status families—and of our communities as a whole, threatening people with evictions and homelessness and breaking families apart.

The proposed rule will not only hurt families while they struggle to find housing in the short term, but will also lead to reduced opportunities and increased health problems for these families in the long term.<sup>48</sup> Public housing provides one crucial source of homes affordable to

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<sup>45</sup> See, e.g., L. Kraus et al., "2018 Disability Statistics Annual Report," 9 (2019)

at [https://disabilitycompendium.org/sites/default/files/user-uploads/Annual\\_Report\\_2018\\_Accessible\\_AdobeReaderFriendly.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/Annual_Report_2018_Accessible_AdobeReaderFriendly.pdf) ("In 2017, the poverty rate of individuals with disabilities (ages 18-64) was 29.6 percent. In contrast, in 2017 the poverty rate of individuals without disabilities was estimated at 13.2 percent.")

<sup>46</sup> See, e.g., National Fair Housing Alliance, "Making Every Neighborhood A Place of Opportunity: 2018 Fair Housing Trends Report," 52 (2018) at <https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report-4-30-18.pdf> ("As has been the case in past years, the majority of complaints from 2017 involved housing discrimination against people with disabilities.")

<sup>47</sup> s.e. smith & Rebecca Cokley, *Reforming Elections Without Excluding Disabled Voters*, CTR. FOR AM. PROGRESS (Mar. 29, 2019), <https://www.americanprogress.org/issues/disability/news/2019/03/28/468019/reforming-elections-without-excluding-disabled-voters/>.

<sup>48</sup> Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

over 2 million low-income people in America,<sup>49</sup> and the evidence is clear that affordable housing supports health.<sup>50</sup> When families have to put too much of their income towards rent, they cannot afford to pay for other basic needs like food and health care, which is why problems like food insecurity increase along with housing costs,<sup>51</sup> and many renters delay needed medical care because they cannot afford it.<sup>52</sup>

Hundreds of thousands of families will be evicted from federally subsidized housing under this proposal, which will have severe consequences for their health. People who are evicted from their homes, or even threatened with eviction, are more likely to experience health problems like depression, anxiety, and high blood pressure than people with stable housing.<sup>53</sup> They are also more likely to become homeless, contend with long-term housing instability, and to visit an emergency room.<sup>54</sup> Studies have also shown that unstable housing situations can cause individuals to experience loss of employment and can dramatically increase the risk of an acute episode of a behavioral health condition, including relapse of addiction in adults.<sup>55</sup>

Eviction and other forms of housing instability, such as having to move frequently, are particularly harmful for children, which means that these rule changes would harm the health of many children, largely U.S. citizens, living in mixed-status families. Research has shown that economic and housing instability impedes children's cognitive development, leading to poorer life outcomes as adults.<sup>56</sup> Unstable housing means that kids are more likely to have behavioral problems and to struggle in school<sup>57</sup>—and in classrooms where the student population changes quickly and frequently, all students can fall behind.<sup>58</sup> Housing instability is directly correlated to

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<sup>49</sup> CENTER ON BUDGET & POLICY PRIORITIES, *Policy Basics: Public Housing* (Nov. 15, 2017), <https://www.cbpp.org/research/policy-basics-public-housing>.

<sup>50</sup> Nabihah Maqbool, Janet Viveiros, & Mindy Ault, CENTER FOR HOUSING POLICY, *The Impacts of Affordable Housing on Health: A Research Summary* (Apr. 2015), <https://www.rupco.org/wp-content/uploads/pdfs/The-Impacts-of-Affordable-Housing-on-Health-CenterforHousingPolicy-Maqbool.etal.pdf>.

<sup>51</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503043).

<sup>52</sup> 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](https://www.enterprisecommunity.org/news-and-events/news-releases/2019-04_renters-report-housing-costs-significantly-impact-their-health-care).

<sup>53</sup> 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/>.

<sup>54</sup> 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](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).

<sup>55</sup> See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CENTER ON BUDGET AND POLICY PRIORITIES (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund* (Jan. 2015), <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

<sup>56</sup> HEATHER SANDSTROM & SANDRA HUERTA, *THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS* (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

<sup>57</sup> *Housing Instability is Linked to Adverse Childhood Behavior*, HOW HOUSING MATTERS (May 9, 2019), <https://howhousingmatters.org/articles/housing-instability-linked-adverse-childhood-behavior/>.

<sup>58</sup> 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](https://www.researchgate.net/profile/Heather_Schwartz/publication/267687704_Housing_as_a_Platform_for_Improving_Education_Outcomes_among_Low-Income_Children).

decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life.<sup>59</sup> Education itself is linked to positive health outcomes and longer lives.<sup>60</sup> Thus, creating housing instability in children's lives can have immediate and negative health impacts, and can also lead to poorer health across the lives of affected people and their communities by disrupting education.

In sum, HUD should withdraw the proposed rule in its entirety and continue implementing current policy regarding Section 214. The proposed rule is contrary to both the plain language of Section 214 and clear Congressional intent, and contravenes federal anti-discrimination law in housing. The proposed rule will harm immigrant families and U.S. citizen families alike. The proposed rule will also disproportionately affect immigrants with disabilities or serious health conditions. Beyond its direct impact on the immigrant community, the proposed rule will also result in a spillover effect of economic loss and harm to overall public health and unduly burden administrative agencies who will have to implement the rule. We urge HUD to instead dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services, and support they need to remain healthy and productive.

NCLEJ's comment includes numerous citations to supporting research, including direct links to relevant studies and other data. We direct HUD to each of these cited studies and the links that we have provided, and we request that the full text of each of the documents, data, research, or studies cited, along with the text of this comment, be considered part of the formal administrative record on the proposed rule for the purposes of the Administrative Procedure Act.

NCLEJ appreciates the opportunity to comment on this proposed rule. If you have any questions regarding NCLEJ's comments, you may contact Senior Attorney Leah Lotto ([lotto@nclej.org](mailto:lotto@nclej.org)), Senior Attorney Travis England ([england@nclej.org](mailto:england@nclej.org)), Staff Attorney Britney Wilson ([wilson@nclej.org](mailto:wilson@nclej.org)) and Equal Justice Works Fellow Jen Rasay ([rasay@nclej.org](mailto:rasay@nclej.org)). Thank you for your consideration of our comments.

National Center for Law and Economic Justice

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[ving Education Outcomes among Low-Income Children/links/546621100cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf](https://www.nclej.org/education-outcomes-among-low-income-children/links/546621100cf25b85d17f58d7/Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.pdf).

<sup>59</sup> See Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at <http://gradworks.umi.com/3639463.pdf> (citations omitted).

<sup>60</sup> S. Egerter, P. Braveman, T. Sadegh-Nobari, R. Grossman-Kahn, and M. Dekker, *An Examination of the Many Ways in Which Education can Influence Health, Including How Educational Attainment Affects Health Across Generations and the Social and Economic Advantages it Represents*, ROBERT WOOD JOHNSON FOUNDATION (Apr. 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/education-matters-for-health.html>.