

July 9, 2019

Regulations Division
Office of General Counsel
United States Department of Housing
and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

**Re: Housing and Community Development Act of 1980: Verification of Eligible Status,
Docket No. FR-6124-P-01 (May 10, 2019)**

Dear Secretary Carson:

Texas Appleseed and Texas Housers submit the following comments on HUD's proposed rule "Housing and Community Development Act of 1980: Verification for Eligible Status" published as a Notice in the Federal Register at 84 Fed.Reg. 20589 (May 10, 2019) (Notice).

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change on broad-based issues of social equity, including disaster recovery and fair housing. Our goal is to ensure that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity.

Texas Low-Income Housing Information Service (Texas Housers), a non-partisan, non-profit corporation, has worked in Texas with community leaders in neighborhoods of people of color living with low incomes to achieve affordable fair housing and open communities for over 25 years. Citizen engagement, civil rights enforcement, and fair housing are at the center of our work.

The proposed rule would not bring the regulations into greater alignment with the wording and purpose of Section 214, as HUD claims. The proposed rule would, by HUD's own estimate, evict 25,000 families from their homes, including 55,000 U.S. citizen or eligible immigrant children. It would also jeopardize the housing of millions of U.S. Citizens and elderly immigrants who cannot provide the proposed required documentation, or, particularly for persons who are elderly or have disabilities, for whom obtaining documentation is too great a financial and/or physical burden. The proposed rule will spend additional public dollars to evict low-income families in the midst of a housing crisis, separate families and inflict trauma, increase homelessness, and create new and costly administrative burdens on HUD and agencies that provide

housing assistance. HUD's own analysis admits that evicting one set of eligible tenants to replace them with another set of eligible tenants will not result in additional persons receiving housing assistance, and will most likely result in a decrease in the number of households assisted and in the quality of the housing provided.¹ The Section 214 requirements as they are currently written already ensure that only people of eligible immigration status are receiving benefits, and the proposed changes violate the Administrative Procedures Act, Fair Housing Act and the Civil Rights Act. The Notice should be withdrawn immediately.

I. Introduction

Section 214 of the Housing and Community Development Act of 1980 was designed to prevent HUD from providing assistance to people with an ineligible immigration status, while protecting the rights of American citizens and persons with eligible immigration status and ensuring that they have access to federal housing assistance to which they are entitled by law. The statute as it is currently written already ensures that public benefits will be distributed only to citizens and persons with eligible immigration status; the proposed rule is not only arbitrary and otherwise in violation of federal law, it directly contradicts the plain language of the statute and the intent of Congress. Federal Agencies may make rules implementing laws passed by Congress, but they may not attempt to undermine federal law by passing regulations that change the meaning of the law.

In 1987, Congress amended the HCDA by inserting a new subsection entitled "Preservation of Families."² In 1995, Congress amended the legislation specifically to allow for prorated assistance based on the number of eligible family members. In addition to the plain language of the statute, the legislative history indicates the intent of Congress to keep families from having to break up or forgo assistance because some of the family members had an ineligible status. The proposed rule contravenes the plain language of the statute and the intent of Congress, is unsupported by evidence, and in violation of the Fair Housing Act of 1968 and Title VI of the Civil Rights Act of 1964.

By requiring documentation of the citizenship and immigration status of every household member, prohibiting a person with an ineligible immigration status from serving as the leaseholder and making prorated assistance a temporary condition, HUD will be displacing more than 25,000 families, including 55,000 children, which directly contradicts the purpose of the statute.³ The effect of the proposed regulations will not be a streamlined process; it will be displaced families and American citizen children.

¹ We note that much of the housing HUD currently assists is in unlivable and dangerous condition. For

² 42 U.S.C.A. § 1436a(c)(1)

³ Mazarra, Alicia. "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance." Center on Budget and Policy Priorities. July 01, 2019.

II. The Notice and proposed rule changes are contradicted by the plain language of Section 214 itself.

Section 214 of the Housing and Community Development Act contains an explicit provision to ensure the preservation of families.⁴ HUD claims that the proposed regulatory changes better reflect the statutory requirements of Section 214. However, HUD's own regulatory impact analysis predicts that families will be displaced or separated under the new regulations, thereby directly contradicting the plain language and legislative intent of the statute.⁵

42 U.S.C. §1346a(b)(2) states that;

*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.*

The statute plainly states that assistance "shall" be prorated "if the eligibility of at least one member of a family has been affirmatively established" There is no requirement that any other member of the family affirmatively establish eligibility or ineligibility. The requirement that all members of a household affirmatively establish their citizenship or immigration status directly contravenes the plain language and intent of the statute.

HUD's argument that the policy changes will bring HUD's regulations into greater alignment with the wording and purpose of Section 214 is patently false, according to the language and intent of Section 214.

HUD asserts that subsidies will be transferred from "ineligible households (mixed families), which contain some ineligible individuals, to eligible households (non-mixed families), which contain no ineligible individuals."⁶ However, mixed families are unequivocally not ineligible for housing assistance under the Housing and Community

<https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

⁴ 42 U.S.C.A. § 1436a(c)(1)

⁵ HUD, *Regulatory Impact Analysis*, April 15, 2019, Available at: <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>

⁶ *Id.* at 2

Development Act, which is why the statute provides for a prorated assistance based on the number of eligible household members.

HUD itself admits that one of the likeliest outcomes from the proposed regulations is a reduction in quantity and quality of assisted housing.⁷ It also explores the possibility that some families or individuals will experience homelessness as a result of the proposed changes.⁸ It fails to explain, however, how fewer households served, deterioration of the units, and increased homelessness are more in line with the purpose of Section 214.

III. The Notice does not contain evidence or reasoning that supports the proposed rule change.

HUD provides absolutely no concrete justification for its proposed rule changes to Section 214 of the HCDA. Instead, it merely continues to claim without evidence or explanation that the new regulations will better reflect the “wording and purpose” of Section 214.

HUD states, “A household would probably suffer a worse outcome by trying to adapt to the new rules than by leaving together.”⁹ It also cites data showing that the economic benefit to children who grow up in a two-parent household outweighs the financial assistance from the housing subsidy.¹⁰ This data and reasoning seem to contradict HUD’s own argument, and instead support a conclusion that the new regulations would cause much more damage to families than any arbitrary statutory alignment.

HUD’s analysis also relies on the premise that there will be an even transfer of assistance from mixed households to non-mixed households.¹¹ It provides no evidence, however, to support this possibility. Instead, its analysis of the effects shows that the new regulations will likely result in substantial economic costs due to families who move, are evicted, or experience homelessness.¹²

HUD claims that the requirement that a leaseholder have eligible immigration status is consistent with the intent to limit assistance to individuals with eligible immigration status.¹³ However, it fails to explain how this requirement is necessary when the statute already precludes individuals with an ineligible immigration status from receiving assistance. As HUD’s own data shows, 6% of mixed-family households consist of ineligible children and eligible parents, while 70% consist of eligible children and

⁷ *Id.* at 3

⁸ *Id.* at 15

⁹ *Id.* at 9

¹⁰ *Id.*, citing multiple studies on family structure and its implications on child well-being

¹¹ *Id.* at 11

¹² *Id.* at 13

¹³ *Id.* at 4

ineligible parents.¹⁴ This requirement will not bring the regulations “into greater alignment with the wording and purpose of Section 214,” which contains no such requirement, the leaseholder requirement is being deliberately imposed to displace families from their homes, or force the separation of parents, children, and other family members.

The proposed documentation requirements would also harm vulnerable families and create administrative burdens. People receiving federal rental assistance are less likely than others to have proof of citizenship and other identifying documentation readily available or obtainable¹⁵, and eligible households might lose assistance and be unable to regain it due to funding shortages and waiting lists.¹⁶ HUD claims that requiring verification is consistent with the intent to limit assistance to individuals with eligible immigration status and that it is focused on reducing unnecessary regulatory burdens, but the statute already has requirements in place to ensure that assistance is only provided to eligible individuals.¹⁷ HUD’s new requirements would in fact create an unnecessary regulatory and administrative burden on housing agencies, costing millions of public dollars, without furthering the purpose of the statute or the agency’s mission.¹⁸

Because the Agency’s proposed action is unsupported by evidence, contravenes the statute it purports to implement, and violates the Fair Housing Act and Title VI of the Civil Rights Act, it is arbitrary and capricious, an abuse of discretion, not otherwise in accordance with law, and exceeds HUD’s statutory authority, in violation of the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

IV. The Notice violates the Fair Housing Act, 42 U.S.C. § 3604 and Title VI of the Civil Rights Act of 1964 by discriminating on the basis of race, color, and national origin.

HUD’s proposed rule discriminates on the basis of race, color, and national origin in violation of the Fair Housing Act of 1968.

¹⁴ *Id.* at 8

¹⁵ We refer the agency, for example, to the extensive evidence submitted in voting rights cases demonstrating how difficult obtaining even a drivers’ license or state identification card is for low-income persons and protected classes.

¹⁶ Mazarra, Alicia. "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance." Center on Budget and Policy Priorities. July 01, 2019. <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

¹⁷ HUD, *Regulatory Impact Analysis*, April 15, 2019, Available at: <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>

¹⁸ Mazarra, Alicia. "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance." Center on Budget and Policy Priorities. July 01, 2019. <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

First, the proposed rule would violate Sections 3604 and 3617 of the Fair Housing Act on the basis of the race, color, and/or national origin of the persons it directly targets. The proposed rule may also discriminate on the basis of disability, sex (particularly against victims of domestic violence and trafficking), and familial status, because it will have a disparate impact on those protected classes. The proposed rule deliberately denies housing to, and seeks to coerce and intimidate persons who assert their rights to seek and enjoy housing free from discrimination under §3604, persons with a national origin other than the United States or who are perceived to have a national origin other than the United States, and persons on the basis of their race and color. HUD openly states that it expects “fear” to motivate mixed status families to leave their homes, even if that fear is unjustified.¹⁹ There is no reasonable explanation or basis for the proposed rule, and HUD openly admits this in its regulatory analysis.

Not only is the proposed rule discriminatory on its face, it is motivated by discriminatory animus. For example, HUD asserts, without evidence, that “[i]neligible residents are likely to be illegal residents.”²⁰ This is untrue. Housing assistance is not available to persons with many legal immigration statuses, including work, employment, and student visas. “Ineligible” for housing assistance is in no way correlated with undocumented immigration status. The term “illegal” itself is coded language, expressing racial hostility and hostility against persons based on their color and national origin.

Second, the proposed rule violates HUD’s own statutory obligation to Affirmatively Furthering Fair Housing (AFFH). HUD is required to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the Fair Housing Act].”²¹ The Fair Housing Act was intended to prohibit discrimination, but HUD’s proposed regulations would actively further discrimination. HUD has acknowledged that that tightening the regulations could displace 55,000 children, and that fear of separation would cause mixed households to evacuate.²² The proposed regulations, therefore, directly conflict with the Fair Housing Act and the Affirmatively Furthering Fair Housing requirements by actively discriminating on the basis of race, color, and national origin and limiting housing opportunities on the basis of race, color, and national origin. In order to AFFH, HUD must take “meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.”²³ HUD’s proposed rule would perpetuate and increase segregation,

¹⁹ HUD, *Regulatory Impact Analysis*, at 7.

²⁰ HUD, *Regulatory Impact Analysis*, at 7.

²¹ 42 U.S.C. § 3608(e)(5).

²² HUD, *Regulatory Impact Analysis*, April 15, 2019, Available at: <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>

²³ 24 C.F.R. § 5.150.

limit fair housing choice, and by its own actions encourage communities to exclude and discriminate.

The proposed rule also violates Title VI of the Civil Rights Act of 1964, which states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁴ The proposed rule would exclude persons from participation in, deny the benefits of, and directly discriminate in a program receiving Federal financial assistance, on the basis of their race, color, and national origin. Title VI also prohibits federal agencies from using standards that will have a disparate impact on a protected class of people without substantial justification.²⁵ In addition to the fact that the proposed rule deliberately discriminates against persons on the basis of their race, color and national origin, the Center on Budget and Policy Priorities estimates that 95% of people affected by the proposed rule are people of color, reflecting huge disproportionate effect on protected individuals, and HUD has provided no substantial justification for the new policy.²⁶ The documentation requirements would also have a disparate impact – 72% of people subject to the proposed documentation requirements are people of color.²⁷ There are many reasons why a person might not have readily available documentation, and there is no reason HUD should require the additional burden for people who are not claiming to have an eligible immigration status. There is no substantial justification for the proposed, but the effects would be discrimination on the basis of race, color, and, national origin and a disparate impact on those same protected classes.

V. Conclusion

While HUD claims that the proposed regulations requiring verification of immigration status, prohibiting ineligible individuals from serving as the leaseholder, and requiring every member of a household to be of eligible immigration status would further the purpose of Section 214 of the Housing and Community Development Act, the new rules would instead directly contradict the plain language and legislative intent of Section 214. HUD has provided no substantial justification or evidence for the changes, and the effect would be discrimination on the basis of race, color, and national origin and a disproportionate impact on protected classes in violation of the Fair Housing Act and Title VI the Civil Rights Act, and violate the Administrative Procedures Act. For the above reasons, HUD must immediately withdraw this Notice.

²⁴ 42 U.S.C. § 2000

²⁵ *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984);

²⁶ Mazarra, Alicia. "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance." Center on Budget and Policy Priorities. July 01, 2019. <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

²⁷ *Id.* at 5

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