



July 8, 2019

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

RE: FR-6124-P-01 Housing and Community Development Act of 1980: Verification of Eligible Status (the “Proposed Rule”)

To Whom it May Concern:

On behalf of Stewards of Affordable Housing for the Future (SAHF), please accept the following comments on the Proposed Rule, which would alter how HUD implements Section 214 of the Housing and Community Development Act of 1980, as amended causing harmful disruption to individuals and communities and imposing unnecessary administrative burdens on owners and operators of HUD-assisted affordable rental housing.

SAHF and its members are gravely concerned about the millions of people struggling to afford a safe place to call home and the severe shortage of assisted housing units to help the most vulnerable people. However, the Proposed Rule will not address the housing crisis. Instead it risks the displacement of thousands of eligible recipients of housing assistance, creates a significant administrative burden and fosters an environment of fear and disruption that is detrimental to the creation of safe and healthy communities of opportunity. We urge HUD to withdraw the Proposed Rule.

About SAHF

SAHF is a collaborative of thirteen exemplary, multi-state nonprofit affordable housing providers who collectively own and operate more than 141,000 affordable rental homes at 1,939 multifamily properties across the country. These homes serve more than 200,000 low-income people, including people with disabilities, the elderly, families, and those who previously experienced chronic homelessness. SAHF members own and operate more than 37,000 apartment homes at 430 properties in Texas, New York and California, the states projected to be most impacted by the Proposed Rule.

All SAHF members share a belief that connecting residents of affordable housing with needed supports—such as educational resources or health services—can help vulnerable families and seniors achieve a better quality of life. SAHF members fundraise and invest their own resources to provide robust resident services coordination and supports for residents. In 2012, SAHF members began the Outcomes Initiative to create a common framework for its members to measure their impact and inform

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their resident services efforts in five key areas: Work, Income, and Assets; Housing Stability; Education; Community Engagement; and Health and Wellness. In its latest round of data collection, SAHF collected outcomes data in these areas on more than 151,000 residents at 1,400 of its members' properties. We anticipate this data will help us more fully understand the role of stable housing in impacting resident outcomes.

SAHF members have learned that connecting residents with resources and measuring resident outcomes requires a significant investment of time and resources from the owner and a relationship of trust with residents. With a foundation of trust, service-enriched housing can provide a springboard for opportunity. However, when burdensome requirements strain resources and the property level and create an atmosphere of fear and distrust for lawful residents, that opportunity is lost.

1. Harm to Families and Communities

The Proposed Rule undermines the well-being of low-income U.S. citizens, immigrants, and their families by forcing mixed status families to decide to either break up to allow eligible family members to continue receiving assistance or forgo the subsidies so that the families can stay together. The Proposed Rule not only creates impossible choices for mixed status families, it creates stress and instability for the larger community.

The negative impacts of the Proposed Rule will not be limited to ineligible residents, many of whom may be lawful immigrants. HUD's statistics show that 70% of mixed status families are composed of eligible children and ineligible parents. 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.¹ 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 ineligible adults from living in subsidized units even when they do not benefit from assistance, the Proposed Rule forecloses the possibility of these U.S. citizen and lawful permanent resident children from receiving any housing assistance under the covered housing programs.

HUD has assumed that most households with mixed eligibility status will leave HUD assisted housing, particularly those where children are eligible and parent(s) are ineligible. If this is true, as many as 108,000 individuals in mixed status families (in which nearly 3 out of 4 are eligible for assistance) may be displaced from public housing, Section 8, and other programs covered by the Proposed Rule.² These

¹ 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).

² *Id* at 7.



mass evictions and departures from housing assistance may cause increased rates of homelessness and unstable housing among an already vulnerable population.³

In its own Regulatory Impact Analysis (RIA), HUD notes that it “expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”⁴ This atmosphere of fear will be disruptive not only to mixed status families, but also to the communities where they live. With concern about potential displacement, residents may not engage with management on basic tenancy issues or with resident service coordinators or even neighbors on resources that may otherwise help them connect to opportunity. **Adding more documentation requirements creates more barriers to housing for those who need it most and erodes the trust that committed landlords work very hard to create with residents.**

Further, children aware of heightened anxiety often exhibit health and behavioral issues and can impact their attendance and participation in school and afterschool programs. Both family separations and housing stability can lead to toxic stress, trauma, and attachment issues in children. These stresses have long term impacts on the health and well-being of parents and children.

The Proposed Rule will also negatively impact eligible seniors. The Proposed Rule requires that all who declare they are U.S. citizens under penalty of perjury provide evidence of their citizenship, a practice that has proven to be burdensome and costly and unnecessary to protect program integrity. Currently, to establish eligibility for access Section 214 housing assistance, U.S. citizens need to provide a declaration of their citizenship or nationality status signed under penalty of perjury. The Proposed Rule would require that these individuals also provide documentary proof of citizenship or nationality, such as a birth certificate. 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. Older individuals face many challenges in getting this kind of documentation, including difficulties getting to government offices to replace lost records, coming up with the funds to replace these records, and some may have never been issued a birth certificate in the first place.⁵

The Proposed Rule places additional documentation burdens on noncitizen seniors as well, by requiring noncitizens 62 years old or older to provide documentation of their immigration status. Presently, these noncitizen seniors are required to submit a signed declaration of their eligible immigration status and proof of age. Many immigrant seniors will struggle in the same way as citizen seniors to produce this documentation. **For those who are unable to produce the required documents within the required**

³ 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>.

⁴ Note 1 *supra* at 7

⁵ 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>.



time period under the proposed HUD rule, they will lose their housing assistance, and many will be evicted from their homes.

2. *Administrative Burden of Compliance*

In addition to the significant direct harm that the Proposed Rule would cause to thousands of people, it would also impose a significant administrative burden that would indirectly impact hundreds of thousands more. Under the Proposed Rule, residents would be required to submit evidence of eligible status at the next annual reexamination after the effective date of the Proposed Rule.⁶ Given that recertification will occur regardless of the rule, HUD has assessed the administrative burden of compliance to be minimal.⁷ **HUD has neglected to account for other significant components of compliance**, including but not limited to:

- Explaining the policy to residents and addressing resident concerns
- Training staff on the new requirement and requirements for extension
- Additional time spent contacting residents who fail to timely submit to reexamination for fear of displacement.
- Follow up on extensions granted
- Reconciling the Proposed Rule with requirements of other programs

This significant administrative burden will divert staff time and resources from property operations and from programs that serve all residents.

3. *Cost of Enforcement*

HUD has significantly underestimated the cost to owners of enforcing the Proposed Rule on mixed status families that do not voluntarily leave. Discussion in the RIA of compliance and enforcement, including the circumstances under which eviction may be required are largely limited to public housing authorities and landlords of voucher holders, neglecting owners of properties with Section 8 project based rental assistance and other multifamily programs. Enforcement expenses for owners are not limited to eviction costs and where eviction is necessary the costs are not limited to direct transactional costs. Under the Proposed Rule, if an individual fails to provide evidence of eligibility, assistance can be terminated. Termination of assistance itself creates an administrative burden. Tenants may be eligible for continued assistance or a temporary deferral of termination of assistance. Owner are responsible for processing preservation assistance and extensions, which increases the administrative burden of a termination of assistance for a period of up to eighteen months.

If assistance is ultimately terminated, the resident's lease will likely terminate, but as noted in the RIA, the resident may still have rights to remain under local law. Once the subsidy is terminated, the owner will be limited to the rent that may be charged under local law. In some jurisdictions that may be less than the market rent and less than what is required to support the operation and upkeep of the

⁶ Proposed 24 CFR 5.508(f)

⁷ Note 1 *supra* at 16



property. Even in jurisdictions where the landlord may immediately charge the market rent for the unit following termination of assistance, the resident may be unable to pay. The landlord will suffer lost income for that unit and while the landlord may ultimately move to evict residents that cannot pay, it is unlikely that this lost revenue will ever be recovered. The RIA notes the modest transactional costs of an eviction, but doesn't capture what could be thousands of dollars of lost revenue and staffing time. In the case of private owners, these costs may not be covered by subsidy payments. **These significant administrative burdens and costs not only shift the owner's focus and resources from programs that benefits residents, but also create further disincentives to private sector participation in HUD programs.**

HUD's analysis assumes that most households with an ineligible family member will voluntarily leave the property so that they remain together. HUD has based this assumption on the results of academic research, but there is little way to know whether low income families, particularly in high cost housing markets, would apply the same logic. Many families may choose to remain as long as possible or where possible to remove the ineligible family member so that the balance of the household may retain assistance. The RIA does acknowledge the possibility that ineligible family members would remain in the unit, but as a undeclared member of the household (not on the lease).⁸ The presence of undeclared family members is a significant issue for landlords as they can't identify these individuals or consider them in the services provided to residents. Further, undeclared residents can be inconsistent and destabilizing factors at properties where landlords are working hard to build community. **Imposing the Proposed Rule on existing residents clearly incentivizes undeclared residents of the property, which in turn adds enforcement expense for owners.**

Conclusion

The Proposed Rule is harmful to families, including thousands of people eligible for housing assistance, and is costly and burdensome to property owners and operators. The Proposed Rule is unlikely to improve access to assisted housing, in fact as noted in the RIA, the increased cost to the government is likely to result in fewer available units and may lead to homelessness for the families impacted. As discussed above, the disruptive impact of this rule will be felt by entire communities for years to come, and will clearly be contrary to HUD's mission of utilizing housing as a platform for improving quality of life and building inclusive and sustainable communities.

As committed owners and operators of affordable housing, SAHF members accept a reasonable administrative burden to ensure well-run programs and the appropriate use of valuable housing resources. **However, the burden created by the Proposed Rule will jeopardize the housing stability of thousands of current residents and disrupt communities without providing any increase in available housing or making improvements in the quality of life for the communities our members serve. This is an unacceptable trade-off. We strongly urge HUD to withdraw the Proposed Rule and to focus on**

⁸ Note 1 *supra* at 9



policies that create more housing that connects people to the opportunities they need to thrive and live with dignity.

Thank you for the opportunity to provide comments on this important issue. Please feel free to contact me at (202) 737-5973 or aponsor@sahfnet.org with any questions about our comments above.

Sincerely,

Andrea R. Ponsor
COO and Executive Vice President, Policy
Stewards of Affordable Housing for the Future

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