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Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410
Submitted electronically through www.regulations.gov

Re: Docket No. FR-6124-P-01, Housing and Community Development Act of 1980: Verification of Eligible Status

To Whom it May Concern:

The following comments are submitted on behalf of the Poverty & Race Research Action Council (PRRAC). PRRAC is a civil rights policy organization based in Washington, DC, committed to expanding access to housing opportunity for low-income families by promoting federal policies that affirmatively further fair housing.

The proposed changes to 24 C.F.R. § 5 subpart E violate the Fair Housing Act (FHA), implicate the constitutional right to familial association, are contrary to congressional intent, have not properly weighed the costs and benefits, and have unintended consequences for vulnerable citizens. Therefore, we urge HUD to either maintain the status quo or make changes that will affirmatively further fair housing instead of undermining it. The following summarizes our concerns:

1) The proposed rule has a harsh and grossly disproportionate disparate impact on Latino families and children, many of whom are citizens or legal residents. This discriminatory effect violates §§ 804(a) and 808(5) of the FHA. When considering alternative interpretations of a statute, HUD is bound by the FHA to adopt the interpretation that is nondiscriminatory and furthers fair housing.

2) The proposed rule implicates the constitutional right of familial association. Under the Supreme Court's current application of the canon of constitutional avoidance, HUD should not change the status quo to a policy that implicates the rights of parents to be involved in the education and upbringing of their children.

3) The proposed rule is contrary to the congressional intent to keep families together expressed in the 1987 Housing Act, which amended Section 214. HUD should not choose an interpretation of a statute that is contrary to congressional intent when the status quo furthers congressional intent.

4) HUD has not properly considered all of the quantitative and qualitative costs of the proposed rule. HUD's analysis does not properly consider the quantitative effects of increased homelessness and does not discuss the qualitative impacts of family separation and increased homelessness on equity, human dignity, and fairness. Given this deficiency in HUD's analysis, it has severely underestimated the costs of the proposed rule and cannot adopt it without further justification.

5) HUD has not considered the potential impact of the proposed rule on vulnerable citizens who do not have access to proper documentation. The proposed rule overlooks the fact that many low-income citizens and citizens who have previously experienced homelessness do not have ready access to documents that prove their citizenship status.

Based on these concerns, we believe that HUD's new interpretation of benefit under Section 214 and the proposed substantive changes to the immigration status verification process cannot be adopted as written. Therefore, the status quo should be maintained.

1. HUD's new interpretation of Section 214 will violate the FHA because it will have a discriminatory effect on a protected class and does not affirmatively further fair housing.

We are concerned that the proposed rule will violate the FHA in two different ways. First, HUD's new interpretation of Section 214 will violate § 804(a) of the FHA, 42 U.S.C. § 3604, because it will have an impermissible discriminatory effect on eligible Latino immigrants that does not have a legally sufficient justification.[1] Under §§ 803 and 804(a) of the FHA, the government cannot make housing unavailable to people based on a protected class in housing that it owns or funds.[2] The phrase "make unavailable" prohibits both direct discrimination and facially neutral government practices that have a discriminatory effect on a protected class.[3] A facially neutral practice has a discriminatory effect if it "actually or predictably results in a disparate impact on a group of persons…because of… national origin."[4] A disparate impact, which is any adverse effect of a facially neutral practice,[5] is allowed only if the government has a legally sufficient justification.[6] A legally sufficient

[1] We also believe that the proposed rule is based on a discriminatory intent due to many statements and actions taken by the present administration. However, this analysis is beyond the scope of this comment letter.
[2] 42 U.S.C. § 3603(a)(1)(A)-(B); 42 U.S.C. § 3604(a).
[3] Tex. Dep't of Hous. and Comm. Affairs v. Inclusive Communities Project, Inc., 135 S.Ct. 2507, 2517-18 (2015).
[4] Discriminatory Effect Prohibited, 24 C.F.R. § 100.500(a) (2019).
[5] *Disparate Impact*, BLACK'S LAW DICTIONARY (11th ed. 2019).
[6] Discriminatory Effect Prohibited, 24 C.F.R. § 100.500 (2019).

justification only exists if the government's interest cannot "be served by another practice that has a less discriminatory effect."[7]

In this case, HUD's interpretation of Section 214 will have a disparate impact based on national origin because it will have disproportionately negative monetary and quality of life effects on Latinos who are currently eligible for housing subsidies. HUD predicts that the effect of the proposed rule will be to "transfer subsidies from ineligible households (mixed families)… to eligible households (non-mixed families)."[8] Once subsidies are transferred, the families that were receiving them are not only impacted financially, but may also experience homelessness because of the loss of their subsidy.[9] The new policy will therefore, by HUD's own analysis, *predictably* have a disparate impact on eligible Latino families since the mixed-status households that would be harmed are 85% Hispanic, 7% Black, 2% Asian or Pacific Islander, and 5% White.[10] The current households in Section 214 covered programs are 16% Hispanic compared to 38% White.[11]

Furthermore, this disparate impact cannot be saved by a legally sufficient justification because HUD's interest can be served by a less discriminatory policy, namely, the status quo. HUD's interest is to promulgate an acceptable meaning of the statute through regulation.[12] Section 214 states that federal agencies cannot "make financial assistance available for the benefit of" any ineligible immigrant.[13] The status quo of allowing proration (and thereby not giving benefits to an ineligible immigrant) is an alternative, non-discriminatory policy that does not have a disparate impact on eligible immigrants. Since there are other policies that would accomplish HUD's stated goal of promulgating an acceptable meaning of the statute without the discriminatory effects, there is no legal justification for the discriminatory effect, and HUD cannot adopt this proposed rule without violating § 804(a) of the FHA. Similarly, while HUD points to the directive of Executive

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[7] Id. § 100.500(b(1))(ii) (2019).
[8] U.S. DEP'T OF HOUS. AND URBAN DEV., REGULATORY IMPACT ANALYSIS: AMENDMENTS TO FURTHER IMPLEMENT PROVISIONS OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980 2 (2019) [hereinafter IMPACT ANALYSIS].
[9] Id. at 16.
[10] National Housing Law Project, HUD'S PROPOSED RULE ON MIXED STATUS FAMILIES (June 5, 2019), https://www.nhlp.org/wp-content/uploads/KeepFamiliesTogether-Webinar-06052019.pdf
[11] These percentages are approximations based on available datasets. The National Low-Income Housing Coalition found that 13% of households in project-based Section 8 units, 21% of households in public housing, and 16% of households receiving Section 8 vouchers are Hispanic. Nat'l Low Income Housing Coalition, *Who Lives in Federally Assisted Housing*, 2 HOUSING SPOTLIGHT, no. 2, Nov. 2012 at 1, 3. Applying these statistics to HUD data, approximately 16.3% of households currently in Section 214 covered programs are Hispanic. The NLIHC also found that 49% of households in project-based Section 8 units, 32% of households in public housing, and 35% of households receiving vouchers are White, meaning that approximately 38.1% of households in covered programs are White. *See* id.
[12] HUD stated that the proposed rule "will bring [HUD's] regulations into greater alignment with the wording and purpose of Section 214 in accordance with the administration's general effort to 'promote principles underlying the rule of law.'" Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589-90 (proposed May 10, 2019). Properly interpreting statutes is also the purpose of agency regulation generally, *see* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843–44 (1984) ("If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation").
[13] 42 U.S.C. § 1436a(a) (2019).

Order 13771, to reduce regulatory burdens, this proposed regulation would in fact increase administrative burdens;[14] nor does that Executive Order supersede the requirements and protections of civil rights legislation.

Second, the new rule does not affirmatively further fair housing under § 808(5) of the FHA, 42 U.S.C. § 3608. Under § 808(5), HUD must affirmatively further fair housing, in part by promoting "nondiscrimination, residential integration, and equal access to housing benefits."[15] Federal courts have further interpreted HUD's duty to affirmatively further fair housing, stating that the national goal of providing for fair housing is "not precatory; HUD is obliged to follow[it]. Action taken without consideration for [it], or in conflict with [it], will not stand."[16] Since HUD's new interpretation of Section 214 will make accessing housing benefits more difficult for a staggeringly large number of eligible, Latino immigrants in mixed-status families, HUD cannot adopt this interpretation of Section 214 and comply with its duty to affirmatively further fair housing.

Federal case law affirms and clarifies HUD's duty under § 808(5). For example, in *Thompson v. HUD*, the District of Maryland held that HUD violated its duty to affirmatively further fair housing because it did not consider alternatives in its approach to desegregation such as a regional approach that would have measured segregation in the entire Baltimore Region.[17] According to the court, HUD must "take seriously its minimal Title VIII obligation to *consider alternative courses of action* in light of their impact" on fair housing.[18] And when considering alternatives, the First Circuit stated in *NAACP, Boston Chapter v. Secretary of Housing and Urban Development* that HUD must also "at a minimum… assess negatively those aspects of a proposed action that would further limit the supply of genuinely open housing and… assess positively those aspects… that would increase that supply."[19]

The above cases establish the principles that should guide HUD's actions: HUD must consider alternative courses of action and favor actions that increase the supply of fair housing over those that do not. According to these principles, HUD, when interpreting a statute, is bound by § 808(5) of the FHA to consider all alternatives and adopt the interpretation that is nondiscriminatory and furthers fair housing. With respect to this proposed rule, HUD is obligated to, at a minimum, avoid discrimination by adopting the status quo, as the status quo is neutral towards fair housing, while the proposed rule is not.

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[14] See, e.g., discussion in Comment Letter of the National Association of Housing and Redevelopment Officials, https://www.regulations.gov/document?D=HUD-2019-0044-3752.

[15] Michelle G. Collins, *Opening Doors to Fair Housing*, 110 COLUM. L. REV. 2135, 2135 (2010). *See also* 114 Cong. Rec. 3422 (1968) (statement of Sen. Mondale) (stating that the purpose of the FHA is to promote "truly integrated and balanced living patterns").

[16] Shannon v. U.S. Dep't of Hous. and Urban Dev., 436 F.2d 809, 819 (3rd Cir. 1970).

[17] Thompson v. U.S. Dep't of Hous. and Urban Dev., 348 F.Supp.2d 398, 443, 459 (D. Md. 2005).

[18] Id. at 461 (emphasis added) (quoting NAACP, Boston Chapter v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 157 (1st Cir. 1987)).

[19] NAACP, Boston Chapter, 817 F.2d at 154.

In 1995, HUD adopted a non-discriminatory interpretation of the Section 214 requirement to not give housing benefits to ineligible immigrants. It determined that the best way to make housing subsidies available to qualifying, minority immigrants in mixed-status families without giving assistance to ineligible immigrants was to prorate the assistance according to the number of eligible immigrants and citizens in the household so that eligible immigrants could receive assistance as for as long as they needed it.[20] HUD made this decision one year after President Clinton reaffirmed his administration's commitment to the principle of affirmatively furthering fair housing with Executive Order 12892.[21] HUD's 1995 interpretation was an acceptable interpretation of Section 214; it did not discriminate on the basis of national origin in any way.

Conversely, HUD's new interpretation of Section 214 will force a large number of Latino families to choose between the unity of their family and a safe and affordable home for their children, since any ineligible immigrant who lives in a house that receives a housing subsidy will disqualify the entire household.[22] There are 108,104 people in 25,045 immigrant households that are negatively affected by this rule.[23] These households will, by definition, include minority immigrants who are eligible for housing subsidies. Under § 808(5) of the FHA and the court opinions summarized above, HUD cannot adopt this interpretation of Section 214 because it does not promote fair housing through providing equal access to housing benefits and does not give proper weight to alternatives that further fair housing. The status quo, on the other hand, allows eligible, Latino families to seek and retain housing subsidies in accordance with Section 214.[24] Since the 1995 interpretation of Section 214 is an acceptable interpretation that also complies with § 808(5) of the FHA, HUD must either keep the status quo or adopt a new, non-discriminatory rule that maintains equal access to housing benefits for minorities.

2. HUD has not acknowledged that the proposed rule implicates the constitutional right of familial association

The proposed rule would force approximately 19,000 families to choose between raising their children and receiving housing subsidies.[25] Forcing this choice upon a family with the fear of eviction, homelessness, or deportation interferes with the parents' constitutional right to familial association. The Supreme Court has recognized that "the interest of parents in the care, custody, and control of their children… is perhaps the oldest of the fundamental liberty interests recognized by" the court under the due process clause of the 5th and 14th amendments.[26] This constitutional right is now commonly referred to as the right to

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[20] *See* Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589 (proposed May 10, 2019).
[21] Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 20, 1994).
[22] *See* IMPACT ANALYSIS, *supra* note 8, at 1.
[23] Id. at 7.
[24] The current rule also does not have a chilling effect on future eligible immigrants who will no longer apply because they live in a mixed-status family.
[25] IMPACT ANALYSIS, *supra* note 8, at 7.
[26] Troxel v. Granville, 530 U.S. 57, 65 (2000).

"familial integrity or familial association,"[27] and is contained in the Constitution's guarantee that people residing in the United States[28] shall have "freedom of personal choice in matters of marriage and family life."[29] Importantly, the right of familial association can be invoked by either parent, since "a father, no less than a mother, has a constitutionally protected right to the companionship, care, custody, and management of the children he has sired and raised."[30]

In this case, we contend that adopting a policy that potentially forces one parent to leave his or her children so that the rest of the family can receive housing subsidies impermissibly interferes with the right of familial association. According to HUD's own Regulatory Impact Analysis, one way that families will comply with the proposed rule is to "continue to receive assistance but ask the ineligible member(s) to leave."[31] Since most ineligible immigrants are adults that live in "small households that could not easily separate," the Hobson's choice created by the proposed rule implicates the right to familial association.[32] Ineligible immigrants who cannot afford a rent increase must either leave their family and become homeless themselves, or risk their entire family being evicted.[33] In either situation, the ineligible parent can neither "direct the education and upbringing of [their] children,"[34] nor "establish [their] home and bring up children" as a direct result of this proposed rule.[35]

HUD's failure to consider the constitutional implications of the proposed rule in both the Regulatory Impact Analysis and the Notice of Proposed Rulemaking is a potentially fatal oversight. The Supreme Court has been clear that it will apply the canon of constitutional avoidance when reviewing agency rulemakings, as the canon of constitutional avoidance is "one of the ordinary tools of statutory interpretation that reviewing courts must employ at the first step of Chevron's two-step inquiry."[36] Since an Article III court will review this proposed rule when it becomes final, HUD needs to apply the same canon of constitutional avoidance when interpreting Section 214 for the sake of administrative efficiency.[37] The

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[27] Ms. L. v. U.S. Immigr. and Customs Enforcement, 302 F.Supp.3d 1149, 1161 (S.D. Ca. 2018).
[28] Jason B. Binimow, *Application of Due Process Right to Family Integrity and Familial Association to Aliens and Immigrants*, 32 A.L.R. Fed. 3d, no. 8, 2018 at 1, 1 ("There is no legal dispute that the constitutional right to family integrity applies to aliens").
[29] Cleveland Bd. Of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974).
[30] Fiallo v. Bell, 430 U.S. 787, 810 (1977) (internal quotation marks omitted).
[31] IMPACT ANALYSIS, *supra* note 8, at 16.
[32] Id.
[33] Id. at 15.
[34] Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (citing Meyer v. Nebraska, 262 U.S. 390 (1923)).
[35] Meyer, 262 U.S. at 399.
[36]Trevor W. Morrison, *Constitutional Avoidance in the Executive Branch*, 106 Colum. L. Rev. 1189, 1197 n.24 (2006) (citing Solid Waste Agency v. U.S. Army Corps of Engineers, 531 U.S. 159, 172-74 (2001). *See also* 5 U.S.C. § 706(2)(B) (2019) (directing a court to overturn agency conclusions that are "contrary to constitutional right").
[37] Whether an agency should always consider the canons of construction has not been definitively decided by the Supreme Court. *See generally* Morrison, *supra* note 37, at 1192 (discussing the relevant arguments and concluding that "the prevailing assumption appears to be that executive actors can and should employ the judicial canons of statutory interpretation just as readily as any court"). However, it seems obvious that HUD should apply a canon of construction if its action is reviewable by a court that will apply the canon when

canon of constitutional avoidance is based on the assumption that Congress intends to pass constitutional laws.[38] Therefore, when applied to agency action, the canon calls on agencies to "give voice to certain normative values" that are enshrined in the Constitution when they are interpreting statutes.[39] As with HUD's duty to affirmatively further fair housing, the canon of constitutional avoidance requires HUD to seriously consider alternatives that do not implicate constitutional rights when interpreting a statute. The status quo, which does not implicate any constitutional rights, is therefore the better policy.

3. HUD's new interpretation of Section 214 is contrary to congressional intent

In addition to raising serious constitutional concerns, the proposed rule is contrary to clear congressional intent to preserve families. When Congress passed the 1987 Housing Act, which amended Section 214, it included a provision for continued assistance for mixed-status families in order to "support the sanctity of the family" [40] and "avoid division of [the] family."[41] Thus, the 1988 proposed rule interpreting Section 214, which formed the basis for 1995 rule,[42] proposed prorated assistance for mixed-status families.[43]

By making the provision of financial assistance unavailable to mixed-status families regardless of whether giving assistance would prevent the separation of a family, the proposed rule goes against congressional intent for families to be able to receive continued (pro-rated) assistance.[44] Since the status quo allows local government to protect families through continued, prorated assistance in certain circumstances, and does not force them to terminate assistance if the assistance is necessary to keep a mixed-status family together, it should be maintained.

4. HUD has not properly considered the costs of the proposed rule

HUD has not properly considered the costs of the proposed rule in its Regulatory Impact Analysis. Under Executive Order 13563, every agency "must take into account benefits and costs, both quantitative and qualitative," when reviewing current regulations.[45] HUD's

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reviewing the agency action. Id. at 1197 ("If an agency knows that its construction of a statute will likely face judicial review, and if the reviewing court would predictably use a particular canon when construing the statute, then the agency has a tactical incentive to apply the canon even if the values supporting it apply only to the judiciary").

[38] Almendarez-Torres v. United States, 523 U.S. 224, 238 (1998).

[39] Morrison, *supra* note 37, at 1212.

[40] Restriction on Use of Assisted Housing by Aliens, 53 Fed. Reg. 41052 (proposed Oct. 19, 1988) (citing 133 Cong. Rec. S18615 (daily ed. Dec. 21, 1987) (statement of Sen. William Armstrong) (internal quotation marks omitted)).

[41] Id. (citing 42 U.S.C. § 1436a(c)(1)(A) (2019)).

[42] Restrictions on Assistance to Noncitizens, 59 Fed. Reg. 43900 (proposed Aug. 25, 1994).

[43] Restriction on Use of Assisted Housing by Aliens, 53 Fed. Reg. 41052 (proposed Oct. 19, 1988) ("Section 214(c)(1)(A) confers discretion on PHAs and the Secretary of HUD to continue assistance indefinitely to a family *whose head of household or spouse does not have eligible status* but that also contains at least one person who lacks eligible status) (emphasis in original)).

[44] 42 U.S.C. § 1436a(c)(1)(A) (2019).

[45] Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

Regulatory Impact Analysis is woefully deficient in analyzing both the quantitative and qualitative costs of the proposed rule. While HUD has considered some quantitative costs in its impact analysis,[46] it has not sufficiently considered all quantitative costs such as (but not limited to) the costs of collecting documentation on PHAs, potential litigation costs, and the costs of increased homelessness. Additionally, HUD has not considered any of the qualitative costs of the proposed rule on intangible values like equity, human dignity, and fairness.

First, HUD has not considered the effect of the proposed rule's documentation collection and notification requirements on PHAs.[47] While some PHAs already ask for documents to verify citizenship, there are many that do not because there are not enough immigrants in their jurisdiction to justify the costs.[48] For these PHAs, the additional verification and notification requirements would greatly increase administrative burdens and take up valuable staff time. This administrative burden of collecting documentation, processing the information, and training staff on the new requirements is wholly unjustified considering only .003% of people in covered programs are ineligible.[49]

Second, HUD's estimate of the potential costs of litigation is inadequate. Since the new rule requires PHAs to follow more complex procedures when both accepting and evicting new tenants, it will create new avenues for litigation during the early stages of implementation. HUD has only estimated the costs of evictions based on the average national rate of formal evictions.[50] This estimate is inadequate due to the potential ease of litigation based on a failure to follow new procedures and the potentially protracted nature of these suits on novel regulatory issues. Therefore, the formal eviction process will likely be both more costly than HUD anticipates and occur at a higher rate than the national average.

Third, HUD's estimate of the quantifiable costs of increased homelessness is also inadequate. While HUD has estimated the costs associated with homelessness,[51] HUD assumes, without justification, that families living in project-based Section 8 units and receiving Section 8 vouchers will be able to afford market-rate rent.[52] Contrary to HUD's

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[46] IMPACT ANALYSIS, *supra* note 8, at 15 (finding potential costs between $3.3 and $4.4 million for evictions).
[47] Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20592 (proposed May 10, 2019) (requiring that U.S. Citizens submit appropriate documentation such as a birth certificate, a naturalization certificate, a Consular Report of Birth Abroad, a valid U.S. Passport, or other appropriate documentation as specified in HUD guidance). The proposed rule also requires PHAs to create two new notification forms on the requirement to submit documentation and train their staff on how to use those forms and explain the new requirements to all of their families. Id.
[48] *See generally* IMPACT ANALYSIS, *supra* note 8, at 6 ("Geographically, 72 percent of mixed families are concentrated in three states— California (37 percent), Texas (23 percent), and New York (12 percent)— while the rest is scattered around the country with 3 percent or less mixed families per state").
[49] This percentage is based on HUD's Regulatory Impact Analysis, which estimates that there are 31,811 ineligible immigrants out of 9,753,063 individuals in Section 214 programs. IMPACT ANALYSIS, *supra* note 8, at 7.
[50] Id. at 15, n. 12.
[51] Id. at 16 (recognizing that the costs of increased services for a homeless person can range from $20,000 to $50,000 per person per year).
[52] Id. at 15 ("If [the 19,000 households that are likely to lose assistance] could afford the rent, then mixed households in project-based programs would have the option to remain tenants but pay the market rent

unjustified assumptions, the vast majority, if not 100%, of the 19,000 families that HUD predicts will lose assistance could become homeless. The average annual income of a mixed-status family is $18,000.[53] The average annual subsidy a family would have to make up is $8,400.[54] This subsidy loss by itself will automatically make each family severely rent burdened,[55] and practically guarantees that each family will be paying over 50% of their income on rent when added to any amount it already pays, thus putting each family at an unacceptably high risk of homelessness.[56] Therefore, HUD's assumption that any family will be able to afford market-rate housing, especially since the income of ineligible members is already considered when determining the subsidy,[57] is circumspect. HUD therefore cannot adopt this rule until it accurately predicts how many families will become homeless under the proposed rule. This prediction is necessary to properly measure the potentially staggering[58] quantitative costs of homeless on communities, local economies, and other government programs.

Finally, HUD has not considered any qualitative costs of lost benefits created by the proposed rule. Qualitative costs should, where appropriate, consider "values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts."[59] We believe that since HUD has documented a potential for family separation and an increase in homelessness,[60] it is necessary for it to also fully consider the qualitative, non-monetary burdens of the proposed rule on values such as equity, human dignity, and fairness. As stated above, HUD recognizes that this rule will lead to an increase in homelessness among parents and children.[61] It will also separate parents from their children.[62] Any increase in homelessness or family separation will have qualitative impacts that need to be considered during the rulemaking process, especially because

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instead of the subsidized tenant payment"); Id at 16 (concluding that "temporary homelessness could arise," if rent becomes unaffordable).

[53] Id. at 12.

[54] Id. at 6.

[55] Yumiko Aratani, et al., *Rent Burden, Housing Subsidies, and the Well-Being of Children and Youth*, NATIONAL CENTER FOR CHILDREN IN POVERTY (Nov. 2011) ("Rent burden is defined as spending more than 30 percent of household income on rent"), http://www.nccp.org/publications/pub_1043.html. 30% of $18,000 is $5,400, which is what a family with an income of 18,000 should, and likely may already under current subsidy programs, pay for housing. Therefore, even a family of four with three eligible members receiving a subsidy of $1,900 per person would, by losing a $5,700 subsidy, automatically be rent burdened.

[56] *See* Joy Moses, *New Research Quantifies the Link Between Housing Affordability and Homelessness*, NATIONAL ALLIANCE TO END HOMELESSNESS (Dec. 13, 2018) ("When housing prices force typical households to spend more than 32 percent of their income on rent, those communities begin to experience rapid increases in homelessness"), https://endhomelessness.org/new-research-quantifies-link-housing-affordability-homelessness/.

[57] IMPACT ANALYSIS, *supra* note 8, at 5.

[58] Based on the information currently considered in the Impact Analysis, if all 19,000 families that will predictably lose their assistance become homeless because they refuse to separate, the increase in cost due to homelessness could be as much as $341 million per month ($81,938 x 50,000 / 12) for each month after implementation until families are housed again. Furthermore, if any families are forced into homelessness, they may be unhoused indefinitely due to the lack of available assistance. *See* Rice, *infra* note 65.

[59] Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[60] See IMPACT ANALYSIS, *supra* note 8, at 15-16 (claiming that increases in homelessness will be slight).

[61] See Id.

[62] See Id. at 16.

homelessness and familial association are essential to our concept of human dignity. Therefore, the proposed rule is unjustified since HUD has underestimated both the quantitative and qualitative costs of the proposed rule as well as the lost benefits of the current rule.

5. **HUD has not acknowledged the potential impact of the heightened requirements for verifying citizenship status on vulnerable citizens**

The proposed rule will also have unintended consequences on vulnerable citizens who will have to prove their citizenship through documentation. Under the current regulations and guidance, housing providers have discretion as to whether request documentation of citizens and nationals, who otherwise need only declare their status under penalty of perjury to be eligible for subsidies.[63] Under the proposed rule, all 9 million citizens who are receiving housing subsidies must verify their citizenship using documentation such as a passport, birth certificate, or naturalization papers.[64] This requirement will result in the exclusion of vulnerable people who disproportionally do not have access to the acceptable documents.

The proposed rule does not take into account the potential effects of these heightened requirements on low-income citizens who currently receive housing subsidies. In a national survey, the Brennan Center for Justice found that as many as 7% of United States Citizens do not have ready access to a passport, birth certificate, or naturalization papers.[65] This number increases to 12% among people who make less than $25,000[66] per year, meaning that the people who need subsidies are the least likely to be able to verify their citizenship.[67] If the 12% of low-income people who do not have access to proper documentation lose their housing subsidies, they will likely not be able to regain their subsidy once they get the proper documentation, as only 1 in 4 eligible households receives a housing subsidy to begin with.[68] The proposed rule would therefore make it more difficult for low-income people to both stay in and attain their housing, and would also increase costs associated with evictions and homelessness beyond HUD's estimates if landlords and PHAs have to evict eligible, low-income citizens that are not in mixed-status households for failure to provide documentation.

The proposed rule would also impact people who are currently homeless and may be applying for benefits under Section 214 covered programs. The National Law Center on Homelessness and Poverty has found that citizens often lose important documents when

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[63] Restrictions on Assistance to Noncitizens, 24 C.F.R. § 5.508(b)(1) (2019).
[64] Douglas Rice, *Trump Proposal Would Jeopardize Rental Aid for Many U.S. Citizens*, CENTER ON BUDGET AND POLICY PRIORITIES: OFF THE CHARTS (June 19, 2019, 3:45 PM), https://www.cbpp.org/blog/trump-proposal-would-jeopardize-rental-aid-for-many-us-citizens.
[65] BRENNAN CTR. FOR JUSTICE, CITIZENS WITHOUT PROOF, 2 (2006).
[66] The poverty threshold for a family of 5 at the time of the survey was $23,400.
[67] BRENNAN CTR. FOR JUSTICE, *supra* note 66, at 2.
[68] Rice, *supra* note 65.

they experience homelessness.[69] In certain jurisdictions, it is also more difficult for citizens to regain the specific documents that prove citizenship as opposed to those that simply prove identity.[70] Therefore, the proposed documentation requirement creates unjustifiable barriers for citizens who are the most in need of housing subsidies. Therefore, the status quo of allowing a declaration as sufficient evidence is preferable. However, if HUD adopts these heightened requirements, it could avoid this problem by either amending the rule to allow heightened verification that is not solely dependent on documentation or by concurrently issuing guidance on what "other appropriate documentation" can be used in extenuating circumstances.[71] We strongly recommend any of these alternatives to a blanket regulation with no exceptions.

6. Conclusion

The proposed rule will make housing subsidies unavailable to eligible minorities. It unjustifiably discriminates against Latinos, promotes unequal access to housing benefits, implicates constitutional rights, disregards congressional intent, is overly burdensome, and will have unintended consequences on vulnerable populations. For these reasons, we believe that HUD cannot adopt this proposed rule. HUD should maintain the status quo, as it promotes equal, non-discriminatory access to housing benefits as required by the FHA, does not implicate constitutional rights, promotes congressional intent, is less burdensome, and has no unintended consequences for vulnerable citizens. We further urge HUD make changes in the future that will preserve families and promote equal access to housing for eligible immigrants, minorities, and citizens in accordance with Section 214, the Constitution, and HUD's mandate to affirmatively further fair housing.

Sincerely,

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[69] *See generally* NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS (2004) ("Lacking any place to store possessions, homeless people also often face loss or destruction of their belongings, including their identification").
[70] Id. at 5.

[71] Restrictions on Assistance to Noncitizens, 24 C.F.R. § 5.508(b)(1)(vi).