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Submitted via Regulations.gov

Office of General Counsel, Rules Docket Clerk
Department of Housing and Urban Development
451 7th 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 Office of General Counsel:

I am writing on behalf of Citizens' Housing and Planning Association (CHAPA) in response to the United States Department of Housing and Urban Development's (HUD) proposed rule that would make two changes to HUD's regulations implementing section 214 of the Housing and Community Development Act of 1980, as amended (Section 214). CHAPA is in strong opposition to these changes and urges HUD to withdraw the rule in its entirety and allow HUD's long-standing regulations to remain in effect.

CHAPA is a Massachusetts non-profit organization that advocates for affordable housing and equitable community development. Our mission is to encourage the production and preservation of housing that is affordable to low and moderate-income households and to foster diverse and sustainable communities. HUD's proposed rule change to the regulations implementing Section 214 would undermine our mission and put families and children at risk of homelessness.

HUD contends that the proposed rule is a means of addressing the waitlist crisis faced by a majority of Public Housing Authorities nationwide. CHAPA rejects this strategy. Separating immigrant families will not fix the waitlist backlog. HUD's own analysis of the rule concludes that fewer, not more, families are likely to receive assistance as a result of

this rule change due to the costs associated with implementation.¹ Instead, we remain committed to expanding housing opportunity for all residents through increased funding for state and federal rental assistance programs to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

The proposed rule will force families to decide between housing stability and family stability. In the United States, 70% of mixed-status families receiving HUD assistance are composed of children who are U.S. citizens and at least one parent with ineligible immigration status. This rule would force mixed-status families to choose between keeping the family together and breaking up the family to maintain housing assistance. It is reasonable to expect that most families will decide to stay together and forego assistance, putting U.S. citizen children at risk of homelessness. It is worth noting that HUD relies on this outcome in their regulatory impact analysis, “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, whether that fear is justified.”²

This rule would affect about 640 households in Massachusetts, putting them at grave risk of homelessness. The National Low Income Housing Coalition’s 2019 “Out of Reach” report listed Massachusetts as having the third highest “housing wage” in the country. The “housing wage” in Massachusetts means in order to rent a 2-bedroom apartment at Fair Market Rent (FMR) a household must earn \$33.81 per hour. A Massachusetts minimum wage earner³ would have to work 113 hours per week to afford FMR.⁴ Under the proposed rule, hard-working families choosing to stay together would be forced off assistance and into a rental housing market that is out of reach to most low-income families.

HUD’s interpretation of Section 214 ignores the plain language and legislative history of the statute. Under the statute, HUD must provide prorated assistance to mixed status families. 42 U.S.C. § 1436a (b)(2) states, “If the 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).

Moreover, the statute does not require local housing authorities to affirmatively establish eligibility of each family member in order to receive assistance. 42 U.S.C §1436a (i)(2)(A) states that local housing authorities may “elect not to affirmatively establish and verify eligibility before providing financial assistance.” (Emphasis added).

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 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).

³ Currently \$12.00 per hour in Massachusetts.

⁴ <https://reports.nlihc.org/oor>

The legislative history of Section 214 is instructive and bolsters a plain reading of the statute. Since the passage of Section 214 in 1980, Congress has amended the statute to ensure families remain together. In 1988, Congress amended the statute to include a provision by which mixed status families who had been receiving full subsidy prior to the statute's passage could avoid family breakup.⁵ HUD relies on this amendment to claim that Congress only intended for prorated assistance to be provided for a limited time. This interpretation ignores the fact that nearly a decade later, Congress amended the statute again to provide proration as a way to keep families together.⁶ This history shows Congress's commitment to ensure rental assistance goes to citizens, while also balancing an important public policy that allows families to remain together, even if a member of the family is not eligible for assistance.

The proposed rule would also have a broad negative impact on U.S. Citizens receiving Section 214 assistance. Current law requires U.S. citizens to provide a declaration, signed under penalty of perjury, that they are a lawful U.S. citizen or maintain a lawful nationality status. The proposed rule would create a new requirement that all recipients of assistance who declare they are a U.S. citizen also provide evidence of their citizenship. This requirement is burdensome, costly, and unnecessary for program integrity.

Adding more documentation requirements creates more barriers to housing for those who need it most. For example, a survey conducted by the Brennan Center for Justice found 7% of citizens do not have citizen documentation readily available.⁷ Obtaining citizenship documentation can be particularly burdensome for citizens over the age of 50, citizens of color, citizens with disabilities, and citizens with low incomes.⁸ The survey was also able to show that at least 12% of citizens earning less than \$25,000 annually do not have proof of citizenship.

Studies of other government programs that have instituted a documentation policy show the dangers of this approach.⁹ One study found that after Medicaid began implementing a citizenship documentation requirement there was a sharp decline in Medicaid enrollment.¹⁰ Half of the 44 states responding to a Government Accountability Office (GAO) survey indicated that Medicaid enrollment fell because of the citizenship

⁵ Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815.

⁶ Use of Assisted Housing by Aliens Act of 1996, Pub. L. No. 104-208, § 572, 110 Stat. 3009.

⁷ 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

⁸ 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>.

⁹ 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).

¹⁰ 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/do7889.pdf>.

documentation requirement. The GAO also found that states reported increased administrative costs in assisting applicants and determining eligibility.¹¹

The proposed rule will reduce the quality and quantity of federally assisted units. HUD estimates the cost of replacing the 25,000 mixed-status families with fully eligible households will cost HUD \$372-\$437 million annually.¹² HUD’s own regulatory impact analysis finds that in order to pay for these increased costs, “the likeliest scenario would be that HUD would have to reduce the quantity and quality of assisted housing in response to higher costs.”¹³ Further, HUD estimates that “there could be fewer households served under the housing choice voucher program; while for public housing, this would have an impact on the quality of service, e.g., maintenance of the units and possibly deterioration of the units that could lead to vacancy.”¹⁴

This proposed rule will fail to achieve the stated goal of addressing subsidized housing wait times and will in fact exacerbate this very issue. In short, the proposed rule will not further HUD’s mission to “create strong, sustainable, inclusive communities and quality affordable homes for all.”¹⁵ For these reasons, we urge HUD to withdraw the proposed rule immediately.

Sincerely,



Rachel Heller
Chief Executive Officer

¹¹ *Id.*

¹² 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).

¹³ 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).

¹⁴ *Id.*

¹⁵ HUD, About HUD, Mission (last visited May 20, 2019), <https://www.hud.gov/about/mission>.