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July 5, 2019

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

Re: [Docket No. FR-6124-P-01] Housing and Community Development Act of 1980: Verification of Eligible Status [1]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the notice (FR-6124-P-01) titled "Housing and Community Development Act of 1980: Verification of Eligible Status" published in the *Federal Register* on May 10, 2019.

Formed in 1933, NAHRO represents over 23,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers, and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. The National Association of Housing and Redevelopment Officials is unique in our ability to represent Public Housing Agencies, Local Redevelopment Agencies, and other HUD grantees of all sizes and geography.

The National Association of Housing and Redevelopment Officials believes that the current verification of eligible status system should be left in place. The changes in the proposed rule would unnecessarily hurt families and children, including U.S. citizens, and add additional administrative burden, all without the commensurate benefits suggested in the proposal. The current subsidy proration policy decouples the size of the family from the federal benefit received. This policy has been in place for over two decades and providers of assisted housing, particularly those most impacted by this proposal that serve many mixed-status families, have not vocalized any hardships or desire to change the policy.

[1] All citations are informal.

The National Association of Housing and Redevelopment Officials offers the following recommendations:

1. Make no changes to the current eligible status verification regulations;
2. If unwilling to follow the first recommendation, then restrict application of the new rule to new applicants of covered programs; and
3. If unwilling to follow either of the first two recommendations, then take the steps and adopt the recommended language in this letter before implementing the proposed rule.

This letter is divided into four sections. The first section discusses why the current immigration verification system should remain; the second section discusses a less harmful, costly and administratively burdensome alternative that does not impact existing tenants; the third section discusses steps HUD should take should it decide to implement the proposed rule;; and the fourth section discusses specific changes to the regulatory language that NAHRO recommends if HUD decides that it will still implement the proposed rule.

1. **Section I – Do not change the current regulatory scheme**

    a. **The current system fulfills the goals of federal law**

        i. **The current system fulfills the spirit of the law**

Currently, families that have mixed-immigration-statuses receive prorated subsidies such that no federal funding is being used to help those who are not citizens or eligible immigrants.[2] Mixed-immigration-status households have the option of not contending the immigration status for certain family members. Families then receive a prorated subsidy (or in the case of some covered programs--e.g., public housing--pay proportionally higher rents).

The current rules do not allow for a single individual with ineligible status to use federal dollars for housing assistance under one of the covered programs. The system is carefully calibrated such that there are no incentives for ineligible immigrants to lie about their status.[3] Thus, the Department can be sure that no federal dollars are being used inappropriately.

        ii. **The current system complies with the plain meaning and text of federal law**

The Housing and Community Development Act of 1980, as amended, does not require new regulatory language to comply with the plain meaning and the text of the statute. The codified statute reads as follows:

> 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.[4]

The statutory text clearly states that in those instances where at least one member of a family has had his, her, or their immigration status affirmatively verified, the ineligibility of other members who have not had their statuses verified should not prohibit the family from receiving prorated assistance. That is exactly the system that is currently in place.

The statute does not state that this form of prorated assistance should eventually be terminated. The regulation as currently codified in the Code of Federal Regulations implements the statute appropriately.[5]

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[2] See 24 C.F.R. §§ 5.500-5.528.

[3] The proposed rule creates a system where ineligible immigrants are incentivized to lie about their status so that their family members can keep their federally assisted housing, while receiving a full subsidy instead of a prorated subsidy. These perverse incentives will create outcomes that HUD is trying to avoid where families will hide their ineligible members to receive a full subsidy.

[4] 42 U.S.C. § 1436a(b)(2).

[5] See 24 C.F.R. §§ 5.500-5.528.

### b. The proposed rule does not comply with the plain meaning of federal law

The intent of the Housing and Community Development Act of 1980, as amended, is to ensure that individuals over the age of 62 are not subjected to a strict evidentiary standard in proving their citizenship. While it is beyond the scope of this comment letter to provide a thorough statutory analysis, NAHRO believes that the proposed rule contradicts statutory intent on this point. The National Association of Housing and Redevelopment Officials recommends that HUD only asked for signed self-certification from citizens over the age of 62 and an additional proof of age document for eligible immigrants over the age of 62.[6] This change is in line with requirements of the statute.

### c. The proposed rule will hurt families and children—many of whom are citizens of the United States

If every household with ineligible individuals loses their federal housing assistance under a covered program, then there will be approximately 55,000 children who are citizens or eligible immigrants that will be displaced and at high risk for homelessness.[7] In implementing this proposed rule, the Department would be depriving children of some of the benefits of living in assisted housing, including lower rates of home overcrowding, lead poisoning, and moving.[8] Housing assistance can also lead to improvements in school and higher earnings as adults.[9]

It is important that HUD realizes that there will be many more American citizens and eligible immigrants who will be harmed than ineligible immigrants. Using information from HUD's Regulatory Impact Analysis, for every ineligible member who this proposed rule will harm, it will harm 2.39 American citizens or eligible immigrants.[10]

### d. Changes to current system would be administratively burdensome

#### i. The proposed rule would create burdensome document collection requirements

The proposed rule asks for new documentation requirements which would be burdensome for PHAs to comply with. For example, the proposed rule states that United States citizens must submit appropriate documentation such as a U.S. birth certificate; a naturalization certificate; a Consular Report of Birth Abroad (FS-240); a valid unexpired U.S. passport; or other appropriate documentation as specified in

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[6] This is also the current requirement for individuals over the age of 62. See 24 C.F.R. §§ 5.508(b)(1)-(2).
[7] HUD's Regulatory Analysis, pages 7-8. The 55,000 children who are citizens or eligible immigrants comes from knowing that in mixed family households, there are 76,141 individuals who are citizens or eligible immigrants and 73 percent of mixed households are composed of children ((76,141)*(.73) = 55,583).
[8] "Trends in Housing Assistance and Who it Serves," the Public and Affordable Housing Research Corporation, page 3, https://www.housingcenter.com/wp-content/uploads/2019/06/Housing-Impact-Report-2019.pdf.
[9] "Trends in Housing Assistance and Who it Serves," the Public and Affordable Housing Research Corporation, page 3, https://www.housingcenter.com/wp-content/uploads/2019/06/Housing-Impact-Report-2019.pdf.
[10] See HUD's Regulatory Analysis, page 7. In all of the mixed-immigration-status families, there are 76,141 eligible persons to 31,811 ineligible people—a ratio of 1 to 2.39.

HUD guidance.[11] Currently, the only requirement for U.S. Citizens is a signed declaration stating that the person is a citizen.[12]

While many PHAs already ask for birth certificates or other forms of identification that would comply with the proposed rule, there are some that do not. For these PHAs, this additional documentation requirement for citizens and other eligible immigrants would increase administrative burdens—including those that are in areas (like most of the country) where there are no populations of ineligible immigrants or very small populations of ineligible immigrants.[13]

According to HUD's regulatory analysis, there are 31,811 individuals who are likely to be ineligible persons. Yet, the proposed rule would require new documentation from all 9,573,064 people in 4,603,667 households.[14] Where previously, a signed declaration would have been enough for a PHA to establish an individual was an American citizen, the new rules would require new documents for these folks. This rule would establish new information collection on all covered programs when only 0.003 percent of the people under covered programs are ineligible.[15]

In the past, studies have shown that income recertifications can be one of the more burdensome aspects of program management for affordable housing programs.[16] The reason for this is that it is time consuming to ask for documents and then go back and forth as program participants try to provide the correct documentation. While this is particularly burdensome when conducting income recertifications, it has the potential to be as burdensome in this case also. There may be scenarios when U.S. citizens do not have the appropriate documentation and have to meet with PHA staff several times as they try to fulfill the documentation requirements. The PHA staff will also have to spend large quantities of time helping U.S. citizens navigate the bureaucratic hurdles in securing the appropriate documentation. The additional burden that this would add to PHAs is not worth the marginal benefit. In the housing choice voucher program, ongoing occupancy tasks are the tasks that currently take the longest to complete.[17] This rule would add to that time.

In most areas, where there are not large ineligible populations, it does not make sense to impose this new high evidentiary standard. If the proposed rule were to be implemented, PHAs will have to ask for documents for all of their program participants where previously they did not.

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[11] See 84 Fed. Reg. 20,592.
[12] 24 C.F.R. § 5.508(b)(1).
[13] Additionally, one member told us that obtaining birth certificates in her jurisdiction costs $20 per birth certificate. For a family of five American citizens, verifying their citizenship in this way would cost $100, which could be a prohibitive amount for families that are seeking housing assistance.
[14] See HUD's Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, page 7.
[15] This percentage was calculated by dividing the number of potentially ineligible individuals (31,811) in HUD's regulatory analysis by the total number of individuals in the covered programs in HUD's regulatory analysis (9,573,063).
[16] Finkel, Meryl, et. al., "Housing Choice Voucher Program Administrative Fee Study," page 92. Ongoing occupancy activities—i.e., work conducted on behalf of existing program participants, not including inspections—is the most expensive component of running a housing choice voucher program. The proposed rule would add additional work to both ongoing occupancy activities and intake, eligibility, and lease-up activities (though applying the rule to new applicants would significantly streamline burden by only adding to the intake, eligibility, and lease-up activities).
[17] Finkel, Meryl, et. al., "Housing Choice Voucher Program Administrative Fee Study," page 67.

### ii. Changes in family size will require re-housing in new units

The Department of Housing and Urban Development has rules about how PHAs may determine the appropriate number of bedrooms under PHA subsidy standards per household based on family size in the public housing context. If the proposed rule causes changes in family composition such that eligible family members leave, re-housing these smaller families in appropriately sized units will be burdensome. Public housing agencies will have to ensure that unit sizes match the new family composition. This will require that new units be found to match the new family composition.

Similar rules exist in the housing choice voucher program context, except the burden for the move will be placed on the family.[18] While this will cause a burden for all families that need to relocate, it will be particularly burdensome for families in areas with low vacancy rates. For example, the New York-Newark-Jersey City Metropolitan Statistical Area (MSA) had a vacancy rate of 4.5 percent in 2018; the Los Angeles-Long Beach-Anaheim MSA had a 2018 vacancy rate of 4.0 percent; and the San Diego-Carlsbad MSA has a vacancy rate of 4.5 percent in 2018.[19] These are relevant because according to HUD's regulatory analysis, these are all areas that will be disproportionately affected by the proposed rule.[20]

### iii. The proposed rule will be difficult to enforce

While the intent of this proposed rule may be to ensure that all the members of all the families that receive HUD assistance are citizens or eligible immigrants, this rule will not ensure that outcome. After discussing possible implementation outcomes with NAHRO's membership, we believe that there is a high likelihood that at least some families will not comply with the rule, while (falsely) affirming that their non-eligible members have moved out. This will create compliance difficulties for NAHRO members as it will be difficult for PHAs to figure out which families are complying and which families are only pretending to comply. Enforcing this will also be difficult because it will be hard to know for certain whether a family member is actually living in the unit. This is especially true for the housing choice voucher program where a private landlord owns the unit and the PHA only has occasional opportunities to enter the unit (e.g., for an inspection).

As HUD's regulatory analysis notes, these families that are not complying with the proposed rule will no longer receive a prorated subsidy (i.e., they'll be receiving additional money), but will still have ineligible family members living with them.[21] In effect, the proposed rule would reward families that are pretending to comply with the new rule without actually complying by providing them additional subsidy. Additionally, given enforcement difficulties, it will be very burdensome for PHAs to identify families. This makes the real-world implementation of this rule extremely problematic.[22] There is a

[18] In the housing choice voucher program, these regulations can be found at 24 C.F.R. § 982.402.
[19] From the United States Census Bureau, Housing Vacancies and Homeownership, Annual Statistics 2018, https://www.census.gov/housing/hvs/data/ann18ind.html.
[20] See HUD's regulatory analysis, page 6.
[21] See HUD's Regulatory Analysis, page 9.
[22] As HUD's Regulatory Analysis notes, it would be easier to detect the fraud in public housing, where the PHA has control of the unit than it would in the housing choice voucher program. Page 9.

possibility that implementing this rule would result in increased costs and excessive administrative burdens for PHAs, while not addressing "the problem" that HUD is trying to solve.

#### iv. The proposed rule will force agencies to needlessly have to update their admissions and continued occupancy plans

Additionally, PHAs will have to revise their administrative plans and their admissions and continued occupancy policies. While there are other instances where regulatory changes require these revisions, in those cases there are usually new discretionary authorities that a PHA can exercise (see HOTMA project basing provisions) or there are concomitant benefits that make the administrative burdens worthwhile. In this instance, given that there are small or no marginal benefits of the proposed rule, the additional costs with the change are unnecessary.[23]

#### v. Complying with the new procedural requirements in the proposed rule will be burdensome

The proposed rule creates several new procedural requirements that will be burdensome to comply with. First, it creates a new notification of the requirement to submit evidence that the individual is a U.S. citizen.[24] Two new notification forms will have to be created.[25] One for the new notification of applicants and the other for the notification of current tenants.[26] Staff will have to be trained on the timelines for when this new notification must be given (to applicants at the time of application of assistance and to current tenants at the next regular reexamination after the rule becomes effective).

In creating the two new documents, the PHA will have to be certain to meet certain requirements. The PHA must state the financial assistance is contingent on U.S. citizens submitting evidence of their citizenship.[27] The PHA must also describe the type of acceptable evidence and provide timelines for when the evidence must be submitted.[28] The PHA must describe that assistance will be granted or terminated upon a final determination of ineligibility after all appeals (if appeals are requested); describe how the assistance may be prorated to a family whose head of household or spouse has eligible immigration status, but the rest of the family has not had their status determined; and describe how to obtain assistance under the preservation of assistance provision.[29]

The PHAs will have to explain these complex provisions to every single one of their families. This puts an unnecessary burden on both the PHA and the family composed entirely of American citizens and eligible immigrant members. Housing agencies will have to create these documents, make sure their staff is trained on the contents of the documents, make sure their staff can explain these complex provisions to all their families, and ensure that the staff is aware of all the new timelines for when evidence must be submitted.

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[23] This was the sole administrative burden identified in HUD's Regulatory Analysis. Pages 16-17.
[24] 84 Fed. Reg. 20,593.
[25] 84 Fed. Reg. 20,593.
[26] 84 Fed. Reg. 20,593.
[27] 84 Fed. Reg. 20,593.
[28] 84 Fed. Reg. 20,593.
[29] 84 Fed. Reg. 20,593.

#### vi. New procedural requirements will invite litigation against PHAs and increase administrative costs

As PHAs have to comply with the new procedural requirements imposed by the new rule, they will be exposed to increased litigation. PHA's compliance with these new procedural requirements may be challenged through litigation.

The challenges to these increasingly complex procedural requirements will be subject to grievance processes or litigated in court, and housing agencies will be forced to expend their scarce resources in meeting them. The rule as it is currently written affords many avenues for lawyers to find deficiencies in implementation..

#### vii. Litigation at the national level will create regulatory uncertainty

Several national litigation groups have already expressed hostility toward the proposed rule.[30] Given this, it is appropriate to believe that there will be lawsuits at the national level if the proposed rule is implemented. These lawsuits may result in federal judges enjoining the implementation of the proposed rule while the case makes its way through the federal district and circuit courts. Even after the proposed rule is promulgated, it is unclear whether and when it will be implemented. This will create regulatory uncertainty and will make it hard for PHAs to create the required documents and train staff according to appropriate new procedures. This lack of knowledge about the specifics of implementation will create an uncertain regulatory environment. The National Association of Housing and Redevelopment Officials urges HUD to give additional thought to whether the perceived benefits of this rule are worth the real implementation costs and drawn-out legal battles that this rule is sure the engender.

### e. Implementing the proposed rule will shift burden to local homelessness programs

The proposed rule will likely result in some families with mixed-immigration-status having their HUD assistance terminated and not being able to find other alternative and affordable shelter. This will likely result in those families becoming homeless and will seek assistance from local homeless service providers. This will create a situation where the federal government will effectively shift care to local governments. Given the current state of many localities, this will greatly impact their budgets and will further stress already overburdened local homelessness programs.

Additionally, the proposed rule may create additional unsheltered homeless people on the street, which will impact both the families and the community. There may be increased public costs related to health care, and other city or county services.

### f. Implementing the proposed rule would be costly

Implementing the proposed rule would increase costs for these programs nationally. According to HUD's own regulatory impact analysis, implementation of the proposed rule would range in a cost of $193

[30] See "NHLP Denounces HUD's Proposed Noncitizen Rule," (https://www.nhlp.org/campaign/nhlp-denounces-huds-proposed-noncitizen-rule/), and "Lawyer's Committee for Civil Rights Under Law Condemns HUD Secretary Carson's Attack on Immigrant Communities," (https://www.nhlp.org/campaign/nhlp-denounces-huds-proposed-noncitizen-rule/).

million to $227 million annually.[31] While it could be argued that these costs would be to house United States citizens and eligible immigrants, this may not necessarily be the case. As mentioned previously, there is a high likelihood that at least some families will falsely state that their ineligible family members have moved.[32] This will create a situation where federal dollars will actually go to ineligible persons and the increased costs will not help additional citizens and eligible immigrants.

**g. The proposed rule would force turnover of families creating unneeded tension with landlords**

If this proposed rule were to be implemented, then many families would lose their HUD assistance. In some programs—particularly those that use private landlords (such as the housing choice voucher program)—this loss of assistance would cause the affected families to be unable to make rent payments. Lack of rent payment would cause turnover in the families and decrease landlords' revenue. This change would occur at a time that many jurisdictions are already struggling with retaining landlords. Future landlords—seeing HUD drop families from the housing choice voucher program or other programs–would be less incentivized to rent to HUD program participants.

One recent research paper on landlord behavior discussed why eviction was costly to landlords participating in the housing choice voucher program:

> . . . [E]viction has its downsides. Most importantly, it can be costly to the landlord. Eviction usually creates a period of vacancy in the unit, meaning missed rent and the potential for vandalism, in addition to the costs of finding a new tenant and dealing with deferred maintenance. Thus, although eviction is one solution . . . it is far from a cure-all, containing several direct threats to profitability.[33]

**h. Some local judges will not evict tenants for failure to comply with the proposed rule**

Many of our members have expressed concern that some local judges may not evict tenants solely because they are a mixed-immigration-status household. In the housing choice voucher program, the tenant may be unable to pay the rent due to termination and the judge will be more likely to evict for nonpayment of rent. On the other hand, many local judges view public housing as the housing of last resort and may hold it to a higher eviction standard and not evict a tenant even if the household does not comply with the proposed rule. PHAs that try to comply with the proposed rule, but face opposition from local judges will be caught in the middle.

**i. Implementing the proposed rule may be difficult in sanctuary jurisdictions**

The interplay between this proposed rule and sanctuary designations is not clear. While this will vary by jurisdiction, there may be jurisdictions in the United States that have laws which may prevent PHAs from

[31] HUD's Regulatory Analysis, page 3. This cost is only the estimated increase in cost of the covered programs. It does not include all the increased administrative costs that NAHRO foresees impacting PHAs.
[32] HUD's Regulatory Analysis, page 9.
[33] Garboden, Philip, et. al., "Urban Landlords and the Housing Choice Voucher Program: A Research Report," page 19, https://www.huduser.gov/portal/sites/default/files/pdf/Urban-Landlords-HCV-Program.pdf.

enforcing eviction actions.[34] It is not clear how this proposed rule will impact program administration in those jurisdictions. For example, if a mixed-immigration-status family has their assistance terminated and the landlord (whether the PHA or a private landlord) has the family evicted, local law enforcement may not be empowered to enforce the eviction. This may result in a situation where the family has been formally evicted, but there is no enforcement mechanism, so the family remains in the unit without paying any rent to the detriment of the PHA or the private landlord.

While the above may be an extreme example, there may nonetheless be instances where local laws will conflict with the enforcement of the proposed rule. This will make enforcement especially difficult in certain jurisdictions. The National Association of Housing and Redevelopment Officials believes that this is one of the reasons to maintain the current carefully calibrated system. Absent keeping the current system, the Department may want to consider writing in a carve-out for PHAs in sanctuary jurisdictions so they are not placed in an untenable situation where they are forced to comply with federal regulations absent local enforcement mechanisms.

### j. The proposed rule would not significantly impact waiting lists

According to HUD's regulatory analysis, there are 15,526 program participants in the housing choice voucher program who are likely to be ineligible and 12,612 program participants in the public housing program who are likely to be ineligible.[35] If the entire family left for each of these ineligible people, there would be 55,448 people leaving the housing choice voucher program and 40,202 people leaving the public housing program. In total, if both eligible and ineligible individuals left the housing choice voucher program and public housing program, 95,650 people would leave. According to one analysis, if all those who wanted to be on waitlists currently were able to join waitlists (many cannot because the waitlists are closed), there would be 9.5 million on the housing choice voucher waitlists and 2 million on the public housing waitlists.[36] If we assume approximately the same number of people enter the programs off the waitlists as people who leave those two programs, it would clear .008 percent of the need on the waitlist. Stated differently, it would do almost nothing to help alleviate the strain on those who are waiting to enter the housing choice voucher program or public housing program.

### k. This proposed rule is antithetical to the administration's executive order to streamline regulations

The administration has issued an executive order titled "Enforcing the Regulatory Reform Agenda" that sets the policy of the United States to "alleviate unnecessary regulatory burdens."[37] This proposed rule is antithetical to that stated policy.

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[34] For a more detailed analysis of the relevant issues, please see Peck, Sarah Herman, "'Sanctuary' Jurisdictions: Federal, State, and Local Policies and Related Litigation," *Congressional Research Service*, https://fas.org/sgp/crs/homesec/R44795.pdf. At this time, it is not clear whether there are local jurisdictions which have local laws which may impair the implementation of this proposed rule, but we acknowledge the possibility that local jurisdictions may pass laws before the rule is finalized to impair its enforcement.
[35] HUD's Regulatory Analysis, page 7.
[36] "Housing Agency Waiting Lists and the Demand for Housing Assistance," PAHRC, page 3, https://www.housingcenter.com/wp-content/uploads/2017/11/waiting-list-spotlight.pdf.
[37] See https://www.federalregister.gov/d/2017-04107.

At this time, there is no housing related financial assistance going towards ineligible immigrants. Mixed-status families, where the Department of Housing and Urban Development has not affirmatively verified the status of all individuals within the family, are receiving prorated subsidy amounts. This has the effect of ensuring that taxpayer dollars are being spent on United States citizens and eligible immigrants.

As stated before, ineligible immigrants do not currently receive federal housing subsidies. There should be no reason to rewrite regulations and introduce regulatory uncertainty when there is no problem to be fixed. The potential costs greatly outweigh any benefits—not promulgating the proposed rule would be the agency action that would best help to alleviate unnecessary regulatory burdens.

**l. Given the tough fiscal climate, administrative streamlining should be the highest priority**

Given the inadequacy of funding for the public housing, section 8, and other housing accounts, administrative streamlining should be the administration's top priority. Streamlining regulations has the equivalent effect of providing additional funding as money that would be used for administrative purposes is used to help improve housing outcomes. While administrative streamlining is no substitute for actual funding, it does allow federal dollars to be used more effectively.

This proposed rule, with its excessive administrative burdens and lack of understanding of real-world implementation, is a step in the wrong direction. It has the effect of lessening the impact of federal funding. It would additionally create new problems at the local level, which the carefully calibrated system currently in place largely avoids.

**m. There are documented immigrants who are not eligible immigrants and will have HUD assistance terminated despite being in the United States legally**

The proposed rule would force those who are documented immigrants but not eligible immigrants that are part of mixed-immigrant-status families to lose their HUD assistance. There are certain categories of documented immigrants who are not eligible immigrants. These individuals are here in the United States legally and are currently considered mixed-immigrant-status families. If the proposed rule is implemented as currently written, it will potentially harm documented immigrants such as persons in the U.S. on temporary employment visas or survivors of serious crimes granted U-visa non-immigrant status (these individuals are "crime victims that have suffered significant physical or mental abuse while in the U.S. and are assisting law enforcement and government officials in prosecuting those who perpetrated the criminal activities"[38]). Additionally, there may be scenarios where a single mother who is here legally on a student visa is receiving prorated assistance for her and her citizen children (i.e., the mother is here legally, but as a student not eligible for assistance, but her children are eligible for a prorated amount) that have their HUD assistance terminated because of the implementation of the proposed rule as it is currently written.[39]

[38] See https://docs.wixstatic.com/ugd/d97bc4_2cc576e88c9145259e5f79e577a7de07.pdf.
[39] See https://docs.wixstatic.com/ugd/d97bc4_2dac65de32164a369a9977e4fb7af047.pdf.

### n. HUD could better utilize its scarce resources

If HUD should decide to continue with implementing this proposed rule, it should be a lower priority item than other important policies and regulations HUD has yet to complete. The Department should focus on finishing those items before implementing this proposed rule which would have no benefits, but lots of burdens. A list of several items that should be completed include:

#### i. Implement all the provisions of the Housing Opportunity Through Modernization Act of 2016

Although this bill had been passed in 2016, many of its provisions have still not been implemented. The Department should prioritize implementation of this bill before implementing the proposed rule.

#### ii. Implement the provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act

This bill reduces administrative burdens for small PHAs and makes certain program changes to the Family Self-Sufficiency (FSS) program. The Department has already missed several of the statutory deadlines for implementing some of these provisions. The Department should prioritize the implementation of this bill before implementing the proposed rule.

#### iii. Update all out-of-date Guidebooks

The Department's guidebooks provide a single place to view all of programs rules, including requirements imposed by statutes, regulations, and guidance. Greater compliance with HUD's complex set of rules would be facilitated if program administrators had a single place to look through all program requirements. This is a much more important goal to be completed than this proposed rule.

#### iv. Continue with the expansion of the Moving to Work program

Although an expansion of the Moving to Work program was passed in the 2016 Consolidated Appropriations Act—at the time of this writing—there has yet to be additional designations of MTW status. While we understand that the program is complex and the current MTW office is understaffed, NAHRO believes that allocating resources to this office is a better use of HUD's scarce resources than implementing this proposed rule.

#### v. Publish Strategies for Landlord retention for certain HUD programs

For those HUD programs that rely on private landlords (e.g., the housing choice voucher program), the Department should publish strategies on how to recruit and retain private landlords for participation in HUD programs. Landlords are crucial actors to making these programs work well and allocating time and resources toward this endeavor would be a better use of HUD's resources.

### vi. Issue Notice of Funding Availability Announcements

There are numerous pots of money that Congress has allocated, but that HUD has not yet distributed to its stakeholders. In some cases, there are programmatic reasons (e.g., making sure that utilization rates are high enough for certain special purpose vouchers before issuing new special purpose vouchers of that category), but in other cases, the lack of new Notice of Funding Availability (NOFAs) announcements stem from a lack of resources being allocated. We recommend that HUD work toward publishing these NOFAs, which would again, be a better use of HUD's scarce resources than the current rule.

2. **Section II – Find less harmful, burdensome, and more cost-effective alternatives that do not impact existing tenants**

To be clear, NAHRO believes that the existing mixed-immigration status rule should remain in place. But if HUD insists on implementing this new, unnecessary rule, then it should consider implementing it in a way that would reduce harm to existing tenants and some of the administrative burden on PHAs. One consideration is to implement the new requirements only for new applicants to the covered programs. Current families who entered the covered programs as a mixed-immigration status household were following the rules and should not be penalized. Allowing them to be "held harmless" in perpetuity (as it relates to this rule) is a more humane approach to an otherwise harmful and questionable new initiative.

Additionally, this would reduce turnover in units because it would only impact new applicants; it would not disrupt relationships with private landlords; it would not be unnecessarily harsh to current program participants; it would not require PHAs to collect documents from all its current programs' participants; it would not require rehousing certain families; and it would result in fewer procedural mishaps.

### 3. Section III – The Department should complete certain steps before implementing the rule

#### a. The Department should complete another Regulatory Impact Analysis with a greater emphasis on examining administrative costs

The National Association of Housing and Redevelopment Officials is disappointed in HUD's regulatory impact analysis's examination of administrative costs. In a seventeen-page document, the Department devotes only two paragraphs to examining the administrative costs of this rule on PHAs. The conclusion of the two paragraph analysis is that "[the proposed rule's] activities would add to administrative work load and bear some cost, however small and insignificant."[40] The National Association of Housing and Redevelopment Officials does not believe that proposed rule's administrative burden is "small and insignificant."[41]

The only administrative burdensome activity that the impact analysis identifies is the revision of the admissions and continued occupancy policies. The analysis does not note the new procedural requirements to notify applicants and tenants of the new policies, the new documents that must meet these notice requirements, the family turnovers, finding other affordable housing, and the staff training time so that frontline staff is aware of the contents of the notices and the new timelines.

To make sure that there are no adverse consequences and additional administrative burdens, HUD should redo its analysis with a particular focus on the administrative burdens. The department should then go through each point in the additional analysis and discuss how the proposed rule is being changed to dispense with or reduce administrative burden. This analysis along with the changes made to the proposed rule to avoid the administrative burdens identified should be released to the public and all of HUD's stakeholders so that they may comment on the new analysis and work collaboratively with HUD to reduce the burden.

#### b. There should be at least one additional comment period for the proposed rule

If HUD insists on implementing this proposed rule it should provide at least one more comment period to allow feedback on any changes made to the original proposal.

#### c. HUD should create sample notices

As previously mentioned, the rule creates new procedural requirements for PHAs to follow. Included in these procedural requirements are requirements to create notices to be given to new applicants and current residents in covered programs informing them of the new requirements for American citizens and eligible immigrants to provide documentation of their citizenship. To ease administrative burden of implementing the proposed rule, HUD should create sample notices that can be used by PHAs across the country. These notices should fulfill all the requirements imposed by the proposed rule. Use of the notices should be discretionary—if PHAs want to create notices that incorporate the required information, but are tailored toward their specific communities, they should be able to do so.

[40] HUD's Regulatory Analysis, page 17.
[41] HUD's Regulatory Analysis, page 17.

**d. There should be a comment period on all sample notices and guidance documents related to this rule**

To ensure that all notices and guidance are properly structured and do not cause adverse impact to PHA program operations, NAHRO strongly recommends that each notice and guidance document be subject to a comment period. The department's stakeholders could provide useful feedback on any documentation that HUD is proposing. In the past, HUD has done this with certain aspects of implementation of the Housing Opportunity Through Modernization Act of 2016.

**e. The rule should not become effective until all sample notices and guidance documents have been created**

The department should make sure that the effective date of the rule occurs after all sample notices and guidance have been created, commented on, updated, and final copies have been published to HUD's website. While this may seem a minor detail, it is imperative that this occur. If the proposed rule has an effective date that occurs before the guidance has been promulgated and final versions of sample notices are published, then PHAs will be forced to implement the rule without the aid of those documents, creating much greater administrative burden. For this reason, the proposed rule should have an effective date after all the supplementary material has been created by HUD and thoroughly vetted by HUD's stakeholders.

**f. Increase funding to program operations before the effective date of the rule**

If HUD insists on implementing this proposed rule with all of its additional regulatory requirements, then HUD should ensure that the rule have a provision stating that it will not go into effect until there is the necessary program funding to implement it. Each additional regulatory requirement makes it harder for NAHRO's membership to effectively administer housing assistance programs absent additional funding. The National Association of Housing and Redevelopment Officials believes that that this rule should not become effective, period, and should certainly not become effective for the public housing and Section 8 programs (including the housing choice voucher administrative fee) unless programs are fully funded.

**4. Section IV – Changes to proposed rule language**

**a. There should be additional clarity on "other affordable housing"**

The proposed rule states that "if a tenant family does not qualify for continued assistance, the family may be eligible for temporary deferral of termination of assistance . . . for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing."[42] It then defines other affordable housing as "housing that is not substandard, that is of appropriate size for the family, and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent."[43]

This definition of other affordable housing is stringent enough that it will be near impossible for a family to find a unit that meets those qualifications absent a subsidy. The rule should add clarity on what specifically happens to the family in the scenario where the temporary deferral of termination ends and the family is unable to find other affordable housing. Although one plausible reading of the proposed rule would seem to indicate that the family is no longer within the scope of responsibility of the PHA, this is not explicitly written. The department should clarify that the PHA cannot be held liable if the family is unable to find other affordable housing. Since the PHA has scarce resources it may not be able to find a unit that meets the stringent standard set by the proposed rule as other affordable housing.

**b. The proposed rule should explicitly state that Moving to Work agencies may keep their current system for serving mixed-immigration-status families or implement their own scheme for handling mixed-immigration-status families**

As the proposed rule is currently written, it is ambiguous as to whether Moving to Work (MTW) agencies would be subject to the proposed rule or whether they would have the option of using their MTW flexibilities to deal with mixed-immigration-status families in a way that works best for their communities. It is NAHRO's strong recommendation that this rule not encumber Moving to Work agencies. Moving to Work agencies have always relied on statutory and regulatory flexibilities to ensure that they are able to operate efficiently without being impaired by regulations that may not make sense for their communities. There should be an explicit provision added to the proposed rule making it clear that Moving to Work agencies are free to operate under the current system or to create their own process.

The National Association of Housing and Redevelopment Officials has always appreciated this administration's strong support of the Moving to Work program.

**c. The proposed rule should allow PHAs to use the current practice of United States citizens submitting signed declarations as evidence of their citizenship**

This change would drastically reduce administrative burdens for PHAs. Housing agencies would only have to collect documents from households with members with unverified statuses. For the overwhelming number of households that are composed completely of United States citizens, there

[42] 84 Fed. Reg. 20,595.
[43] 84 Fed. Reg. 20,595.

would not be additional document collection. This is a commonsense step that would greatly reduce the amount of administrative burden placed on PHAs and American citizens.

**d. PHAs should have discretion in granting extensions of time for submittal of evidence of citizenship**

Housing agencies should have discretion in granting extensions of time for submittal of evidence of citizenship.[44] The rule currently states that "[a]ny extension of time, if granted, shall not exceed 30 days . . . [t]he responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case." This is an arbitrary time period and the rule is overly prescriptive in forcing a time period for submittal of these documents. In many instances, local hospital administration (where a citizen may try to find a birth certificate) or local government may operate slowly.[45] There needs to be greater flexibility in setting this extension. Limiting it to 30 days will create situations where American citizens, through no fault of their own, will be unable to obtain the needed evidence because of the speed of their local institutions.

The National Association of Housing and Redevelopment Officials has language that HUD may substitute instead:

> (2) *Extension period*. Any extension of time, if granted, shall be determined by the responsible entity and sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension need shall be based on the circumstances of the individual case.
>
> (3) *Grant or denial of extension to be in writing*. The responsible entity's decision to grant or deny an extension shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

Of course, if HUD has taken NAHRO's previously mentioned suggestion that citizens should not have to submit additional documentation beyond a signed declaration, then this point is moot.

**e. The time limit of deferral periods should be extended**

The National Association of Housing and Redevelopment Officials believes that the length of the time period for deferrals of termination of assistance should be controlled at the discretion of the PHA. In some communities, it will be easier for households to locate other affordable housing, but in other communities, particularly those with low vacancy rates, it will be difficult to find a new unit to move to. The housing agency is best positioned to determine that time period. Additionally, the housing agency may want to schedule deadlines on the next regular reexamination so that fewer additional meetings have to be scheduled and administrative burden is lowered. Finally, the maximum time of deferral should be lengthened, again to give PHAs a proper amount of flexibility to properly implement this rule in their communities.

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[44] See 84 Fed. Reg. 20,593.

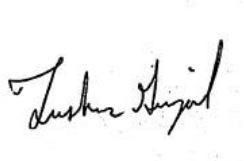
[45] This is sometimes the case with federal government requests too. In the past, it has been NAHRO's experience that Freedom of Information Act (FOIA) requests can take over a year, sometimes multiple years, to fulfill.

The National Association of Housing and Redevelopment Officials offers the following language to be substituted:

> (3) *Deferral period*. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period determined by the responsible entity. The initial period may be renewed for additional periods determined by the responsible entity. These time periods do not apply to a family that includes an individual admitted as a refugee under section 207 of the Immigration and Nationality Act or an individual granted asylum under section 208 of that Act.

The National Association of Housing and Redevelopment Officials thanks the Department for the opportunity to comment on the proposed rule. We strongly believe that the current system to address mixed-immigration status families does not require modification. If you have any questions or comments about this comment letter, please contact Tushar Gurjal at tgurjal@nahro.org.

Sincerely,



Tushar Gurjal
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