*Submitted via www.regulations.gov*

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

**Re: HUD Docket No. FR-6524-P-01**
**Comments in Response to Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status**

To Whom It May Concern:

The City and County of San Francisco, City of Los Angeles, and additional signatories[1] (collectively, the "**Localities**") write to strongly oppose the *Housing and Community Development Act of 1980: Verification of Eligible Status*, 91 Fed. Reg. 8151 (proposed February 20, 2026) (to be codified at 24 C.F.R. pt. 5) (the "**Proposed Rule**"). The Proposed Rule exceeds the scope of HUD's statutory authority and departs from decades of federal precedent by making mixed status families, including many seniors and children, ineligible for federal housing assistance. Mixed status families include household members who have both eligible and ineligible immigration statuses for purposes of participation in federal housing programs under Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. § 1436a) ("**Section 214**").

The Proposed Rule would 1) prohibit mixed status households from living in public housing and Section 8 units and effectively force these families to either separate or forgo prorated rental assistance for eligible mixed status household members, and 2) impose additional significant, onerous, and costly verification and documentation requirements for all tenants, housing authorities, and owners.

The Localities would suffer significant adverse consequences if the Proposed Rule were finalized. Many of the Localities have significant immigrant populations, including mixed status households who will be impacted by the Proposed Rule. The Localities also provide critical social safety net services for all residents of their communities and support the development of affordable housing in their jurisdictions.

As described below, the Proposed Rule is fundamentally flawed for three main reasons. First, the Proposed Rule will harm the health, security, and wellbeing of thousands of families. Second, the Localities, and other similarly situated municipalities, will incur substantial new costs as a direct result of the Proposed Rule. Third, the Proposed Rule is illegal. The Proposed Rule clearly contradicts the plain language and statutory intent of Section 214 and HUD's longstanding regulatory interpretation. It is also arbitrary and capricious because HUD fails to account for the myriad adverse impacts that the Proposed Rule will have, including on vulnerable populations and municipalities, and because HUD does not provide a reasoned explanation for a proposal that will ultimately result in fewer households receiving federal housing assistance.

Therefore, we urge HUD to withdraw the Proposed Rule in its entirety.

[1] City of Baltimore, City of Bend, City of Boston, City of Chicago, City of Cincinnati, City of Evanston, County of Hennepin, County of Marin, City of New Haven, City of New York, City of Oakland, City of San Diego, City of San Jose, County of San Mateo, Santa Clara County, City of Seattle, Sonoma County, and City of Tucson.

## I. The Proposed Rule Would Harm the Health, Security, and Wellbeing of Thousands of Families.

By withdrawing federal housing assistance from mixed status families, the Proposed Rule would deprive thousands of families—including in the Localities—of secure and affordable housing. The Proposed Rule is particularly pernicious because it would primarily harm individuals who are eligible for federal housing assistance—many of whom are U.S. citizen children and seniors. Families excluded from federal housing assistance because of the Proposed Rule would face a heightened risk of homelessness and family separation, both of which are associated with many adverse health and safety impacts. Nor does the Proposed Rule have any countervailing benefit; in fact, HUD acknowledges that fewer households would receive assistance under the Proposed Rule.

### A. Thousands of Low-Income Families in the Localities Would Likely Be Displaced from Housing Assistance by the Proposed Rule.

The Proposed Rule places low-income mixed status families in an impossible situation: either a loved one must leave their home so that the remaining eligible family members may continue receiving housing assistance, or the family must forgo all of their federal housing subsidies so that the family members can remain together. As HUD acknowledges, for the vast majority of these families, this is not a choice at all. Almost 75 percent of mixed status households consist of children with eligible status and parents with ineligible status. HUD, Regulatory Impact Analysis, Housing and Community Development Act of 1980: Verification of Eligibility Status, Docket No. FR-6524-P-01, at p. 47 (September 30, 2025) ("**Regulatory Impact Analysis**" or "**RIA**"). As HUD admits, separation is not a viable option for these families, and they will therefore be forced out of their homes. *See* RIA at p. 47.

The Localities are likely to be especially impacted by the Proposed Rule, given the large number of mixed status households accessing federal housing assistance in their jurisdictions. Several Localities are in states with the highest concentration of mixed status households, including California (36 percent) and New York (13 percent). RIA at p. 8. For example, there are an estimated 1800 mixed status families receiving housing assistance in Los Angeles. There are an estimated 171 mixed status families in San Francisco consisting of 645 tenants, including 210 children and 40 seniors. In Sonoma County, there are over one hundred people in mixed status families receiving housing assistance. The Proposed Rule will therefore result in widespread displacement of residents in the Localities and will strain the Localities' resources (as discussed further below).

### B. The Proposed Rule Will Primarily Harm Individuals Eligible for Federal Housing Assistance—Particularly Children and Seniors.

While HUD asserts that the Proposed Rule is intended to reprioritize housing assistance for individuals with eligible immigration status, in fact 70 percent of family members in mixed status families accessing housing assistance have eligible immigration status. RIA at p. 8. Thus, in practice, the Proposed Rule disfavors eligible individuals for housing assistance simply because their parents, children, spouses, or close family members are ineligible. The Proposed Rule will particularly harm children with eligible immigration status, since almost three quarters of mixed status households include such children. RIA at p. 47. In Los Angeles alone, assisted mixed status families include approximately 2700 children. Moreover, contrary to HUD's proffered justification, ineligible members of mixed status families do not receive housing assistance. Under Section 214 and HUD's longstanding regulations, housing assistance is prorated so that only the individuals within a family who have established their eligibility receive assistance. The remainder of the cost of rent for the housing is borne by the family.

In addition, the new onerous verification and documentation requirements in the Proposed Rule increase the risk that many eligible individuals will have their federal housing assistance terminated. A significant number of eligible residents may lose their housing if the Proposed Rule is implemented, not because they lack eligibility, but because they are unable to obtain relevant documents and comply with re-verification processes in time, or because records verifying their eligibility simply do not exist. In particular, under the Proposed Rule, many seniors (62+) who have long been exempt from immigration status verification requirements would suddenly have to produce records, such as birth records and other vital documents, which may be difficult or impractical to obtain. In Santa Clara County, for instance, there are 12,400 seniors who will be impacted by these new verification requirements. Similarly, eligible individuals who have moved frequently, are formerly unhoused, or are survivors of domestic violence may not have easy access to the paperwork necessary to prove their qualified status, and may thus lose their housing assistance for failure to provide the necessary proof.

Moreover, HUD's proposed reliance on the Systematic Alien Verification for Entitlements ("**SAVE**") system for immigration verification raises serious concerns that eligible individuals would be erroneously rejected from housing benefits—particularly in light of this Administration's recent modifications to the system. Several of the SAVE system's data sources are unreliable,[2] and the Department of Homeland Security has acknowledged the "risk that the U.S. Citizenship and Immigration Services may share inaccurate information with registered agencies, which could in turn impact a registered user agency's eligibility determination for an individual."[3] HUD also admits that the SAVE system cannot actually review or process basic documents that a person would use to establish U.S. citizenship, such as a birth certificate or passport. Proposed Rule at p. 8159. HUD offers no assurance that the SAVE system, with its incomplete and error-prone data, is a reliable tool for immigration verification.

### C. Displaced Residents Would Face Increased Risk of Homelessness and Housing Insecurity.

Families and vulnerable individuals who lose their federal housing assistance because of the Proposed Rule would likely face homelessness and housing insecurity. HUD speculates that mixed status families "may be more able to withstand the withdrawal of assistance" because they have higher household incomes than families with all eligible members, RIA at p. 35, but that assumption is entirely unsupported. As HUD notes, mixed status families have a nationwide average annual income of $27,000—below the federal poverty line of $31,200. RIA at pp. 9, 15. Assuming one-third of income is used for rent, mixed status households can only devote approximately $9,000 per year to rent—or about $750 per month.

These families are unlikely to be able to find and afford housing in the Localities, many of which have expensive housing markets. A household spending no more than 30 percent of its income on rent would need an income of $150,000 a year to afford the median market rent for a two-bedroom unit in San Francisco, and over $135,000 for a similar unit in San José and Santa Clara County. Likewise, a family would need a household income of over $86,500 to afford a median one-bedroom apartment in Sonoma County and $80,000 to afford a one-bedroom apartment in Chicago. Los Angeles has consistently ranked as one of the most rent-burdened cities in the nation. Nearly half of Los Angeles renters pay more than 30 percent of their

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[2] Jasleen Singh and Spencer Reynolds, "Homeland Security's 'SAVE' Program Exacerbates Risks to Voters," Brennan Center (July 21, 2025), https://www.brennancenter.org/our-work/research-reports/homeland-securitys-save-program-exacerbates-risks-voters.

[3] DHS, Privacy Impact Assessment for the Systematic Alien Verification Entitlements "SAVE" Program, DHS Ref. No. DHS/USCIS/PIA-006(d), at 19 (Oct. 31, 2025), https://perma.cc/G92U-LYPM; *see also* U.S. Comm'n on Civ. Rts.*, An Assessment of Minority Voting Rights Access in the United States* (2018) https://www.usccr.gov/files/pubs/2018/Minority_Voting_Access_2018.pdf

household income towards rent, and fourteen percent of renters pay 90 percent of their income towards rent.

There is also a scarcity of available rental units in several of the Localities. For example, San José, Sonoma County, and San Francisco all have apartment vacancy rates under five percent—well below the national average rental vacancy rate of seven percent. In Sonoma County, over 5,000 dwelling units have been lost in wildfire disasters since 2017, exacerbating the housing scarcity in the county. In Santa Clara County, there are only 33 affordable and available rental units for every 100 extremely low-income households (covering households making less than 30 percent of the area median income), and only 46 affordable and available rentals for every 100 very low-income households (covering households making between 30-50 percent of area median income). Similarly, in the Chicago metro area, there are only 34 affordable and available units for every 100 households who are at or below extremely low income and 63 available and affordable units for every 100 very low-income households.

As a result of the Proposed Rule, many mixed status families in the Localities—as well as eligible individuals who cannot meet the new verification requirements—are almost certain to become homeless or face housing instability. These residents would need to seek already-strained emergency shelter and other forms of support from the Localities. Many other families are likely to be forced into crowded, sub-standard housing that is unsafe and unhealthy. In addition, mixed status families who have lost federal assistance will have to devote an increased share of their income towards finding housing, and may be less able to meet other basic needs like food and healthcare.

### D. Family Separation and the Loss of Stable, Affordable Housing Would Irreparably Harm Families.

The anticipated harms of the Proposed Rule are not simply monetary. Mixed status families who are forced to ask a family member to leave so that the remaining family members can retain their housing would likely suffer long-term psychological harm. Study after study has shown that family separations undermine family stability, and lead to stress, trauma, and attachment deficits in children. Even a temporary separation could have an enormously negative downstream effect on the health and educational attainment of these children, and many parents struggle to restore the parent-child bond once it has been disrupted by separation.[4]

Mixed status families who choose to forgo federal assistance so that their family members can remain together would also suffer irreparable harm. Studies have shown that housing instability can cause individuals to face a loss of employment and more frequent hospital visits, and is associated with an increased likelihood of mental health problems in children. Housing instability can also dramatically increase the risk of an acute episode of a behavioral health condition, including relapse of addiction in adults.[5] Having safe and stable housing is crucial to a person's good health, sustained employment, and overall self-sufficiency. *See* RIA at p. 12 (noting the positive benefits of housing assistance).

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[4] Laura C. N. Wood, Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children, 2 BMJ Paediatrics Open (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC6173255/.

[5] *See* Will Fischer, Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children, Center on Budget and Policy Priorities (October 7, 2015), https://www.cbpp.org/research/research shows-housing-vouchers-reduce-hardship-and-provide-platform-forlongterm-gains; *see also* Linda Giannarelli et al., Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund (Jan. 2015), https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf.

The negative effects of housing instability would particularly devastate the children of mixed status families, nearly all of whom are U.S. citizens. *See* RIA at p. 12 (stating that the positive effects of housing assistance are "especially important for children"). Research has shown that economic and housing instability impedes children's cognitive development, leading to poorer life outcomes as adults.[6] Housing instability is also directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, thereby limiting students' opportunity to obtain the education they need to succeed later in life.[7]

### E. HUD's Proposed Rule Would Result in Fewer Households Receiving Assistance.

By HUD's own assessment, the Proposed Rule would not only result in the displacement of thousands of families consisting mostly of eligible residents, but it would ultimately lead to fewer households receiving housing assistance overall. Rents for mixed status households are already prorated to only include eligible family members, with ineligible family members paying unsubsidized rents. As HUD acknowledges, mixed status households actually pay more total rent and require less federal subsidies than fully eligible households. RIA at p. 17. Therefore, excluding mixed status households would result in less total rent from tenants and would require more federal subsidies per eligible household. Unless Congress appropriates additional funds for housing assistance, which is unlikely (as HUD admits, *see* RIA at p. 17), the Rule would result in fewer households receiving assistance. In fact, HUD's own Regulatory Impact Analysis concludes that HUD would require *an additional $311 million to $385 million* to provide assistance to the same number of households under the Proposed Rule. RIA at p. 19.

At a time when so many families are already struggling to find affordable housing, in large part due to the federal government's historic disinvestment in federal housing programs, it is unconscionable that HUD has proposed a rule where fewer households would be assisted. There is no legitimate purpose served by HUD's proposal to incur millions of dollars in additional costs to evict eligible residents and their ineligible family members who themselves receive no federal subsidy and who pay higher rent.

## II. The Proposed Rule Would Impose Significant Costs On The Localities And Their Taxpayers And Would Erode Trust In Municipal Services.

### A. Locally-Funded Safety Net Services Would Face Increased Demand and Concomitant Burden to Meet the Needs of Displaced Mixed Status Families.

Local jurisdictions, including the Localities, fund critical social safety net services for their most vulnerable residents, including services to prevent families from losing their housing and to provide shelter to people experiencing homelessness. These locally funded programs are likely to face substantially heightened costs to meet the needs of mixed status families displaced as a result of the Proposed Rule.

The Localities have invested considerable resources in helping low-income families avoid eviction and homelessness. For example, San Francisco funds a program that provides legal representation to tenants facing eviction and anticipates expending over $850,000 to

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[6] Heather Sandstrom & Sandra Huerta, The Negative Effects of Instability on Child Development: A research Synthesis (2013), https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF.

[7] Mai Abdul Rahman, The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at http://gradworks.umi.com/3639463.pdf (citations omitted).

provide services to all 171 mixed status households that may face eviction under the Proposed Rule. Los Angeles has a locally-funded Eviction Defense Program to assist renters facing eviction through contracts with long-standing nonprofit legal services organizations. While the program's capacity has been expanding through phased growth, it would be overwhelmed by a sudden increase in residents seeking to defend against evictions fueled by the Proposed Rule. Los Angeles also funds rental assistance and income support programs for its most vulnerable residents to ensure they are able to remain housed. The increase in demand likely to result from the Proposed Rule would cause these critical programs to be stretched beyond capacity.

Santa Clara operates a Homelessness Prevention System, which is entirely supported through state and local funding and provides short term financial assistance for families facing homelessness. Families served through the Homelessness Prevention System receive financial assistance and services valued at approximately $15,500 per household served. San José, Chicago, and Boston similarly operate programs that provide short-term financial assistance, eviction prevention services, and case management services to families at risk of losing housing and becoming homeless. And Sonoma County funds nonprofits that provide legal services and other support for tenants facing evictions.

The Localities also fund temporary shelter for individuals experiencing homelessness. For example, San Francisco estimates that the cost of providing shelter and meals to a single homeless family is approximately $30,000 per year. In Chicago, it costs $29 per person per night for basic shelter services. Los Angeles, Santa Clara, San José, Sonoma County, and Boston also spend considerable resources to fund emergency support services for those experiencing homelessness, including rapid rehousing, shelter, hygiene, and meals. For each of these jurisdictions, providing shelter and services for a single mixed status family for a single month could result in thousands of dollars in additional costs and burden already-strained shelter resources.

In addition to these monetary costs, the Localities would likely have to devote increased staff time to address the needs of residents facing housing insecurity and homelessness because of the likely increase in mixed status families seeking services. Further, because the Proposed Rule will almost immediately displace hundreds of mixed status families, the Localities would have to shift resources from early intervention towards crisis response—reducing the overall effectiveness of the Localities' homelessness prevention efforts.

Even if the federal housing assistance withdrawn from mixed status families were made available to fully eligible households, it is unlikely to fully offset these costs to Localities—particularly given HUD's acknowledgment that the Proposed Rule would result in fewer households receiving assistance overall. HUD's assertion that the costs to Localities may decline if mixed status families are "displaced from the United States," RIA at pp. 35-36, also has little basis in reality. As HUD acknowledges, 70 percent of members of mixed status households have eligible immigration status or U.S. citizenship, and are thus lawfully present here. The Proposed Rule's effects on homelessness and the resulting costs to local government are not ambiguous or difficult to predict; if finalized, the Proposed Rule would almost certainly increase homelessness and require the Localities to expend additional resources in meeting the needs of displaced families.

The increased costs to Localities are particularly harmful because their resources are already stretched thin. For example, while Santa Clara and Chicago have both invested in increasing emergency shelter and temporary housing capacity, the number of unsheltered homeless people in their jurisdictions still significantly exceeds the number of available beds. San José's eviction prevention and diversion programs provide critical resources for tenants, but are overburdened and cannot handle an increased demand for services. The same is true for many of the homelessness prevention services funded by other Localities. Moreover, many Localities

are already experiencing significant budgetary challenges, and additional funding for homelessness services necessitated by the Proposed Rule would likely come at the expense of other critical local services.

### B. Local Investment in Affordable Housing Would Also Suffer Under the Proposed Rule.

The Proposed Rule would also significantly disrupt the operation of affordable housing providers and local jurisdictions that support them.

For example, Project Based Voucher ("**PBV**") rents—which combine tenant contributions and federal subsidies—enable property owners to underwrite public and private loans for the construction, repair, and operation of affordable housing properties. A sudden mass subsidy termination and eviction of existing tenants would increase costs and reduce cash flow for these properties, which would create significant financial instability for their owners. In addition, affordable housing properties in the pipeline for development that are anticipating future PBV awards may face unexpected funding gaps that could further stall affordable housing development in the Localities.

Many private property owners also rely on Section 8 Housing Choice Vouchers ("**HCVs**") as a reliable source of rental income, and sudden mass subsidy terminations and evictions would result in lost rent, turnover costs, and other adverse financial impacts to these properties. In fact, HUD acknowledges that the Proposed Rule could reduce the number of vouchers issued through the Housing Choice Voucher program. RIA at p. 17. This could weaken the private housing market and result in fewer property owners choosing to participate in the HCV program.

Public housing operated by Public Housing Authorities ("**PHAs**") in the Localities would also be impacted. HUD concedes that because the Proposed Rule would result in HUD providing assistance to fewer households, PHAs would respond by reducing the quantity and quality of public housing, including by leaving units vacant and reducing expenditures on maintenance, protective services, management and leasing services, and programming for tenants. RIA at p. 18.

Local jurisdictions would bear the costs of this disruption to the affordable housing market in their communities. For example, San Francisco provides financial assistance to PBV properties in the form of long-term soft loans and would likely see a decline in PBV property owners' ability to repay these loans. Santa Clara and Los Angeles have each invested hundreds of millions of dollars in local funding into thousands of affordable housing developments, including many that rely or expect to rely on PBVs. Chicago similarly supports the development of affordable housing, including through preservation funding for existing affordable multi-family developments and tax credits for developers who provide low-income rental housing developments. San José, which has invested in almost 23,000 restricted affordable units, would need to assist mixed status families in identifying non-federal subsidies (which are scarce) to replace the lost federal assistance or provide them with more deeply-affordable housing within the city's already limited housing stock.

### C. The Proposed Rule Would Erode Trust.

The Proposed Rule also purports to require that PHAs and private Section 8 landlords provide applicants and tenants misleading information regarding their reporting obligations under the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"). Specifically, the Proposed Rule would require that the notice to applicants of the requirement to submit evidence state that PHAs and Section 8 landlords "must inform DHS immediately

whenever personnel determine that any member of a household is present in the U.S. in violation of the Immigration and Nationality Act." Proposed Rule at p. 8156. Existing Federal Register notices have interpreted PRWORA and its legislative history the reporting requirement in significantly different ways. Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States, 65 Fed. Reg. 58301, 58302 (Sept. 28, 2000). Under that guidance, reporting is triggered only when HUD or a PHA "knows" that an individual is not lawfully present in the United States; that is, when there is a finding of fact or conclusion of law that is, among other things, supported by a final deportation order or other like determination. Notably, a SAVE response that a person is ineligible for a benefit does not trigger a reporting requirement. *Id*. Finally, PRWORA does not impose any reporting requirement on Section 8 landlords. Thus, the notice required by the Proposed Rule appears designed to create confusion and dissuade noncitizens from seeking housing assistance.

The confusion created by this proposed reporting requirement would adversely impact local jurisdictions. Local officials depend on building trust with local communities so that all residents feel comfortable reporting crimes, attending school, and accessing essential safety, health, and social services without fear of immigration consequences. The Proposed Rule would likely erode this trust, increasing residents' fear that local officials would report them to DHS and impairing the Localities' ability to deliver services to their most vulnerable residents. Similarly, extending this reporting requirement to Section 8 landlords exceeds HUD's statutory authority, could lead to confusion among landlords, and may exacerbate existing power imbalance between landlords who participate in Section 8 housing and their tenants.

## III. The Proposed Rule is Unlawful.

In addition to the severe harms that the Proposed Rule would impose on the Localities and their residents, the Proposed Rule is illegal. HUD's Proposed Rule does not faithfully interpret either the plain text or Congressional intent of Section 214, but instead seeks to improperly amend the statute based on HUD's own desired and discriminatory outcome.

The Proposed Rule also violates the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (1946) ("**APA**") because: (1) it directly conflicts with the plain language of Section 214, longstanding Congressional intent, and HUD's governing laws and policies; and (2) it is arbitrary and capricious because it fails to provide a reasoned explanation for departing from longstanding HUD policies, and fails to adequately consider all the negative impacts of the rule. In addition, as described below, the Proposed Rule is unconstitutional.

### A. The Proposed Rule Exceeds HUD's Statutory Authority.

#### 1. The Proposed Rule Violates the Plain Text of Section 214.

First, the Proposed Rule directly conflicts with the text of Section 214, which plainly contemplates that (1) not all members of a family must demonstrate eligibility in order to live in the unit; (2) assistance can be provided on a prorated basis so long as one member of the family living in the household has affirmatively established citizenship or eligible status; and (3) assistance is not time-limited. Section 214 states:

> If the eligibility for financial assistance of at least *one* member of a family has been affirmatively established . . . and the ineligibility of one or more family members has not been affirmatively established . . . any financial assistance made available to that family by [HUD] *shall be prorated*, based on the number of individuals in the family for whom eligibility has been

> affirmatively established . . . as compared with the total number of individuals who are members of the family.

42 U.S.C. § 1436a(b)(2) (emphases added); *see also id.* § 1436a(d)(6) (stating that penalties for improper receipt of assistance "shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family"). In other words, a mixed status family is entitled to assistance at a prorated amount so long as one member of the family has affirmatively established eligibility. HUD's assertion that Section 214 only permits housing assistance if all family members have demonstrated eligible status contravenes the statutory mandate that assistance *shall* be prorated if one family member establishes eligibility. Furthermore, nothing in the statute limits the duration for receiving such prorated assistance.

Despite this plain language, HUD contends that the Proposed Rule "would bring HUD's Section 214 implementing regulations into greater alignment with the wording and purpose of Section 214." Proposed Rule at p. 8153. That conclusory assertion could not be further from the truth. By mandating "the verification of U.S. citizenship or the eligible immigration status of all applicants and recipients of assistance under a covered program regardless of age, and to make prorated assistance a temporary condition pending verification of eligible status of all family members, where permitted by statute," Proposed Rule at p. 8153, § 5.506(b)(l), the Proposed Rule unmistakably contradicts the text of the statute adopted by Congress. Specifically, Section 214 provides that "financial assistance . . . *shall* be prorated" so long as one family member has established eligibility even if the eligibility of other family members has not been established. 42 U.S.C. § 1436a(b)(2) (emphasis added). The Proposed Rule essentially—and illegally—reads Section 214's proration mechanism out of existence.

**2. The Proposed Rule Conflicts With Longstanding Congressional Intent.**

Second, even if the language of the statute were ambiguous, the Proposed Rule still conflicts with longstanding congressional intent to allow mixed status families to receive prorated assistance. When the Housing and Community Development Act was passed in 1980, the statute limited access to various HUD-funded rental housing programs to certain categories of immigrants. Pub. L. No. 96-399, § 214, 94 Stat. 1614, 1637 (1980). In 1986, HUD then promulgated a final rule mandating that all prospective and current recipients of housing assistance submit evidence of eligibility "for the family head or spouse regardless of age, and for all other persons 18 years or older . . . for each such person who is or will be an occupant of the assisted unit." Restriction on Use of Assisted Housing, 51 Fed. Reg. 11198, 11199 (Apr. 1, 1986). The 1986 rule also contained guidelines for evicting or terminating rental assistance for families that failed to provide evidence of eligibility. *See id.* at 11203-09. However, a subsequent lawsuit challenged the final rule for, among other things, impinging on the constitutional right of families to live together by evicting mixed status families or effectively rendering them ineligible to receive any housing assistance, leading to an injunction against the rule's enforcement. Order, *Yolano-Donnelly Tenant Ass'n v. Pierce*, No. CIV. S-86-846-MLS (E.D. Cal. Dec. 18, 1986) (granting preliminary injunction and denying in part motion to dismiss). In light of the ruling, HUD subsequently rescinded the 1986 rule. 53 Fed. Reg. 842 (Jan. 13, 1988).

To stem the separation of mixed status families, Congress amended Section 214 in 1988 so that mixed status families could continue to receive housing assistance, provided that either the head of household or the spouse was eligible. *See* Pub. L. No. 100-242, § 164, 101 Stat. 1815, 1860 (1988) (adding 42 U.S.C. § 1436a(c)). In a House Report discussing the 1988 amendments, Congress explicitly stated that it did not agree with how HUD planned to restrict occupancy to only U.S. citizens or eligible immigrants in its 1986 rule. The House Report stated:

> The injustice that would be caused by implementation of [HUD's interpretation] include: the mandatory eviction of thousands of families now residing in federally-subsidized housing; the eviction of individuals who are citizens or who are properly documented aliens because other members of their household cannot meet the documentation requirements; the denial of admission to families which include citizens and properly documented aliens because not all family members can be properly documented; and the imposition of documentation and verification requirements upon citizens and aliens alike which are not only unduly burdensome, but also impossible even for some citizens to meet. Since these hardships and burdens have not been made obvious, this statute is amended by the bill to address these concerns. *In addition, the Committee is including these changes because [HUD] has incorrectly interpreted the original Act*. *The modifications are intended to clarify the original intent of Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively*.

H.R. Rep. No. 100-122 (Part I), at pp. 49-50 (1987) (emphasis added). Congress thus explicitly clarified that its intent in enacting the 1988 amendments was to keep mixed status families together and to make federal housing subsidies available to families as long as at least one member was eligible for assistance.

In 1996, Congress further amended the statute, again with a view towards preventing family separation while continuing to provide benefits to mixed status families. Although the 1996 amendments changed Section 214 so that, going forward, all mixed status families would only receive prorated assistance, mixed status families would still receive assistance so long as one family member's eligibility had been verified. *See* Pub. L. No. 104-208, § 573, 110 Stat. 3009 (1996) (amending 42 U.S.C. § 1436a(c)(l)(A)). That compromise incorporated in the statute continues today. Congress could have further restricted the assistance provided to mixed status families, such as by enacting a time limit for receiving prorated assistance or eliminating assistance to mixed status families altogether, but it did not. And although the statute has been amended three times since then — in 1998, 2000, and 2016 — Congress has not made any substantive changes to the proration scheme, evincing its unwavering intent to maintain prorated housing assistance to mixed status families. *See* Pub. L. No. 105-276, § 592(a) 112 Stat. 2461, 2653 (1998); Pub. L. No. 106-504, § 3(b), 114 Stat. 2309, 2312 (2000); Pub. L. No. 114-201, § 113, 130 Stat. 782, 804 (2016).

Indeed, HUD itself has acknowledged that the legislative intent of Section 214 supports ongoing prorated assistance for mixed status families so long as one member of the household demonstrates eligibility. In 1995, HUD adopted regulations allowing family members to elect not to contest immigration status, permitting proration of housing assistance, and requiring that housing assistance not be denied based on the presence of an ineligible family member if the assistance has been prorated. 60 Fed. Reg. 14816, 14822 (Mar. 20, 1995). In announcing this proposal, HUD "acknowledge[d] that the statutory language does not prohibit proration of assistance." 53 Fed. Reg. 43900-01 (Aug. 25, 1994). And in its final rule, HUD emphasized that "[p]roration of assistance is consistent with the preservation of Families provisions of Section 214 . . . ." 60 Fed. Reg. at 14822.

HUD's Proposed Rule therefore flagrantly disregards Congressional intent to continue to provide mixed families with housing assistance by fundamentally reinterpreting Section 214 to disregard a scheme that Congress implemented and left in place for over three decades.

### 3. The Proposed Rule Conflicts With Fair Housing Requirements.

Third, the Proposed Rule conflicts with laws and policies mandating that HUD affirmatively promote fair housing and prevent homelessness. For example, since Congress's enactment of the Fair Housing Act ("**FHA**") in 1968, it has been "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601, *et seq*. The FHA requires HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of" fair housing. *Id.* § 3608(e)(5). As noted above, the Proposed Rule will result in HUD providing federal rental assistance to fewer households and displacing thousands of families (most of whose members have eligible status). The Proposed Rule also disproportionately affects the elderly and children, even those who are United States citizens and would be eligible for housing assistance in their own right. As discussed above, almost three quarters of mixed status families have eligible children, and seniors are particularly vulnerable to the new onerous verification requirements in the Proposed Rule. Such a rule does nothing to promote housing, let alone "fair housing throughout the United States." *Id*. § 3601.

## B. The Proposed Rule Is Arbitrary and Capricious.

The Proposed Rule is arbitrary and capricious under the APA. A reviewing court may "hold unlawful and set aside agency action" that is "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). One of the basic requirements of administrative rulemaking is that an agency "must give adequate reasons for its decisions," including "examin[ing] the relevant data and articulat[ing] a satisfactory explanation for its action." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 211 (2016). "Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change." *Id.* This is especially true where the "prior policy has engendered serious reliance interests," and "[i]t would be arbitrary or capricious to ignore such matters." *F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009). In engaging in rulemaking, an agency can neither "rel[y] on factors which Congress has not intended it to consider" nor simply ignore "an important aspect of the problem[.]" *Motor Vehicle Mfrs. Ass'n of United States, Inc*. v. *State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

Here, the Proposed Rule includes barely any explanation—let alone a reasoned or satisfactory one—for abruptly departing from decades of agency regulations by terminating subsidies for existing mixed status families within 90 days, excluding mixed status families from future housing assistance, and requiring all tenants, including seniors (62+), to submit to onerous immigration verification documentation.

HUD's proffered justifications for this sea change in policy are irrational and unsupported. For example, HUD claims that the Proposed Rule is necessary to align more closely with Congress's purpose in enacting Section 214, that is, to restrict benefits from certain categories of non-citizens. But proration already ensures that ineligible individuals are not entitled to housing assistance; only the individuals within a family who have established their eligibility receive rental assistance. Moreover, HUD's own Regulatory Impact Analysis shows that the vast majority of individuals in mixed status families are eligible. RIA at p. 8. HUD does not explain why proration is insufficient to fulfill congressional intent to withhold assistance from ineligible individuals.

Similarly, while HUD asserts that the Proposed Rule is purportedly necessary to "ensure that only U.S. citizens or nationals and eligible noncitizens under Section 214 and other relevant legal authorities benefit from HUD federal financial assistance," it does not explain how ineligible individuals "benefit" from HUD's financial assistance. Proposed Rule at p. 8155. As Section 214 states, "[f]or purposes of this section the term 'financial assistance' means financial assistance made available pursuant to" one of a number of enumerated programs. 42 U.S.C. §

1436a(b)(l) (emphasis added). But mixed status families currently only receive housing assistance for each established eligible individual in the family; those who have not established their eligibility are not entitled to housing assistance. *See id.* § 1436a(b)(2). Thus, HUD does not adequately explain how those who have not established eligibility are receiving "HUD federal financial assistance" since they get no financial assistance whatsoever. *Id*. § 1436a(b)(l).

In addition, the Proposed Rule does not explain why previous verification requirements are insufficient. In Section 214, Congress set out a detailed mechanism to establish eligibility for housing assistance. *See* 42 U.S.C. § 1436a(d). But the Proposed Rule layers on additional onerous requirements for proving eligibility that would be difficult even for citizens, especially elderly citizens, to meet. If recipients are unable to provide the necessary documentation in time, their housing assistance will be put at risk. For example, elderly residents are already required to submit a signed declaration (under penalty of perjury) of their immigration status and a document proving their age. 24 CFR § 5.508(b)(2). The Proposed Rule would require elderly residents to also submit proof of their immigration status. Proposed Rule at p. 8152. Such a requirement serves no legitimate purpose, and there is a significant risk that elderly residents do not have ready access to such documentation. In fact, HUD's own Regulatory Impact Analysis cites a 2024 report by the Brennan Center for Justice, which found that more than 9 percent of American citizens of voting age, or approximately 21 million people, do not have readily available documentary proof of citizenship such as a passport, birth certificate, or naturalization papers. RIA at p. 28. The Report also showed that, compared to the general population, there are certain groups (e.g., primarily poor, elderly, and minority citizens) that are less likely to possess these forms of documentation. The Proposed Rule cites no evidence that Congress's current requirements are insufficient to achieve Section 214's purposes, and provides no justification for this change in verification requirements. In fact, HUD states in the Proposed Rule that it "assumes that . . . there are relatively few noncitizens who falsely declare citizenship under its current rules." Proposed Rule at p. 8152.

Rather than providing reasoned explanations or evidence, the Proposed Rule relies on easily debunked nativist tropes. HUD asserts, without support, that "fully eligible families are better positioned to take advantage of" the opportunities provided by housing assistance. RIA at p. 12. Likewise, HUD claims that the Rule would remove "negative incentives" associated with housing assistance for unauthorized immigrants like "work disincentives." RIA at p. 13. But that assertion is contradicted by HUD's own admission that mixed status families in general have a higher household income than fully eligible households, that the number of mixed status households accessing housing assistance is declining, and that the vast majority of residents in mixed status households have eligible immigration status. RIA at pp. 10, 15. HUD also claims that there are "adverse economic effects of unauthorized immigration," but study after study shows that immigrants contribute to a strong, vibrant economy. RIA at p. 4.[8]

HUD's lack of any reasonable explanation for the Proposed Rule is exacerbated by its failure to consider the Proposed Rule's impacts. Critically, HUD fails to consider the significant reliance interests of mixed status households and the impacts on these families who, though eligible at admission based on decades-old existing rules, would no longer be eligible under the Proposed Rule. Given high market rents and the lack of other affordable housing options for mixed status families, HUD fails to adequately account for the very real risk that mixed status

[8] *See, e.g.*, Bier, David J., Michael Howard, and Julián Salazar. "Immigrants' Recent Effects on Government Budgets: 1994–2023," White Paper, Cato Institute, Washington, DC, February 3, 2026, https://www.cato.org/white-paper/immigrants-recent-effects-government-budgets-1994-2023; Michael Wolf and Rohini Sanyal, *Immigration will play an essential role in shaping the future of U.S. economic growth*, Deloitte Global Economics Research Center (Feb. 27, 2026), https://www.deloitte.com/us/en/insights/topics/economy/spotlight/us-immigration-impact-us-economy.html; Congressional Budget Office, *Effects of the Immigration Surge on the Federal Budget and the Economy* (July 2024), https://www.cbo.gov/publication/60569.

households displaced from housing assistance would face homelessness. HUD also does not account for the well-established adverse impacts of housing instability, particularly on vulnerable groups like children in mixed status families (most of whom are eligible) and the elderly. This omission is particularly glaring given HUD's acknowledgment that 75 percent of mixed status households who will be displaced from federal housing assistance under the Proposed Rule include children with eligible status.

In addition, the Proposed Rule arbitrarily and capriciously fails to consider its numerous other impacts on families accessing federal housing assistance and the localities that serve them. These impacts include, but are not limited to, the following:

- **Effect on eligible individuals**. The Proposed Rule fails to consider its effect on eligible individuals in mixed status families. It is uncontroversial that Congress intends for its housing programs to benefit eligible individuals. But in order to address some unsubstantiated (and nonexistent) crisis of ineligible individuals benefiting from housing assistance, the Proposed Rule fails to account for the significant harm that would fall upon otherwise eligible individuals—either because they have family members who have not established eligibility or are eligible but cannot establish that fact under the new burdensome requirements. Such harms may include the eviction of eligible individuals from housing and eventual homelessness. Furthermore, the fear of failing to establish eligibility despite actually being eligible, or confusion surrounding the Proposed Rule's new requirements, may have a chilling effect on certain individuals' willingness to apply for housing assistance, further exacerbating the problem of potential homelessness. The Proposed Rule utterly fails to address such considerations.

- **Effect on vulnerable populations**. The Proposed Rule fails to consider its effect on particularly vulnerable populations. As noted, the Proposed Rule would disproportionately hurt U.S. citizen children who have ineligible family members, thus preventing these children from receiving any housing assistance at all. The Proposed Rule would also disproportionately harm elderly individuals and survivors of domestic violence who may lack the means or ability to meet the enhanced verification requirements in the Proposed Rule even if they are eligible. HUD offers no justification for why existing verification requirements are insufficient, especially for these vulnerable populations.

- **Areas with high-cost of living or lacking affordable housing**. The Proposed Rule fails to consider that many cities and counties, including several of the Localities, are high-cost housing areas that lack sufficient affordable housing. Even with housing assistance, families in many of the Localities are paying among the highest rents in the country. Immigrants and seniors, in particular, are especially vulnerable to the effects of housing unaffordability. The Proposed Rule would deprive mixed status families and immigrants of critical housing assistance, but fails to address the possibility that such families and their children would lapse into homelessness.

- **Effect on local governments**. While the Proposed Rule claims that the effect on homelessness is unclear, in fact, there is a significant risk that the Proposed Rule would put more families at risk of homelessness, and thereby strain local safety-net services. The Proposed Rule also fails entirely to consider other impacts to localities, including costs to provide tenant support for mixed status families facing eviction and deleterious effects on locally funded investments in affordable housing.

- **Effect on existing availability of affordable housing**. As HUD's own Regulatory Impact Analysis concludes, absent any additional Congressional appropriation (which

is unlikely), the Proposed Rule would cost HUD up to $603 million annually and "the primary effect would be to assist proportionally fewer households and household members." RIA at p. 17. HUD fails to grapple with how the disruption of the Proposed Rule would negatively impact the availability of affordable housing units, as discussed above. This outcome is entirely antithetical to HUD's mission, rendering the Proposed Rule "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

- **Use of new SAVE database**. The Localities remain concerned about the Proposed Rule's reliance on the newly reconfigured SAVE database for immigration verification, especially amid recent reports and admissions by the federal government that there is a risk that USCIS may share inaccurate information through SAVE. In addition, HUD concedes that the SAVE database is not able to perform the most basic required function to verify the immigration status of U.S. citizens, since birth certificates and U.S. passports cannot be reviewed or processed by the SAVE database. Proposed Rule at p. 8159.

- **PRWORA reporting requirements**. The Proposed Rule fails to explain why the proposed notice to applicants and tenants should deviate from the requirements of PRWORA. Such notice would be misleading, confusing, and inconsistent with the explicit language of PRWORA. As a result, the Proposed Rule would create confusion, dissuade noncitizens from seeking housing assistance, and further erode trust that local officials depend upon to provide essential services to all of the Localities' residents.

- **Failure to consider alternatives**. The Proposed Rule fails to explain why other regulatory alternatives would not meet the asserted needs without creating these adverse consequences. The Regulatory Impact Analysis identifies two alternatives: (1) grandfathering in existing mixed status families; and (2) allowing mixed status families with children (regardless of eligibility status) to be eligible for housing assistance. RIA at p. 37. For the reasons discussed above, both of these alternatives are still inconsistent with Section 214. Even so, they would result in significantly less displacement than the Proposed Rule. Yet HUD provides no explanation as to why these alternatives were rejected.

### C. The Proposed Rule is Unconstitutional.

Finally, HUD's proposal to "transfer assistance from mixed status families to fully eligible households" also violates the U.S. Constitution. The Supreme Court has "frequently emphasized the importance of the family" and held that the "integrity of the family unit has found protection in" the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); Order at pp. 3-4, 11, *Yolano-Donnelly Tenant Ass'n v. Pierce*, No. CIV. S-86-846-MLS (E.D. Cal. Dec. 18, 1986) (finding that 1986 HUD rule denying assistance to mixed status households likely violated constitutional right to family unity and caused irreparable harm by forcing plaintiffs to choose between "losing/being denied housing assistance or being forced to separate from a family member"); *see also M.G.U. v. Nielsen*, 325 F. Supp. 3d 111, 119 (D.D.C. 2018) (policy of separating undocumented parent from child after crossing border likely violated Fourteenth Amendment); *D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 593-94 (S.D.N.Y. 2022) (same). The Proposed Rule undermines these constitutional protections by forcing participants in covered programs to make an impossible choice: surrender their housing or separate from their family.

Moreover, the Proposed Rule violates the Fifth Amendment to the United States

Constitution by denying equal protection to a specific class of current lawful recipients and prospective eligible recipients of federal housing assistance. The equal protection guarantee of the Fifth Amendment requires that similarly situated people must be treated alike. *City of Cleburne v. Cleburne Living Ctr*., 473 U.S. 432, 439 (1985). Here, the Proposed Rule fails to treat eligible recipients the same because it denies assistance to certain eligible recipients solely because they live with a family member who is not eligible for financial assistance. There is no legitimate rationale for this discrepancy in treatment.

## IV. Conclusion

The Proposed Rule does not effectively address any legitimate purpose for HUD, yet would tear apart families, force people into homelessness, and rob countless children of their well-being and potential—all while costing taxpayers millions of dollars. The Rule is also contrary to the plain text of Section 214, flies in the face of longstanding congressional intent, and violates the APA and the U.S. Constitution. For all these reasons, the Localities oppose the Proposed Rule and request that it be retracted in its entirety.

Very truly yours,

*The City & County of San Francisco, California*

*The City of Los Angeles, California*

*The City of Baltimore, Maryland*

*The City of Bend, Oregon*

*The City of Boston, Massachusetts*

*The City of Chicago, Illinois*

*The City of Cincinnati, Ohio*

*The City of Evanston, Illinois*

*The County of Hennepin, Minnesota*

*The County of Marin, California*

*The City of New Haven, Connecticut*

*The City of New York, New York*

*The City of Oakland, California*

*The City of San Diego, California*

*The City of San Jose, California*

*The County of San Mateo, California*

*Santa Clara County, California*

*The City of Seattle, Washington*

*Sonoma County, California*

*The City of Tucson, Arizona*