April 21, 2026

U.S. Department of Housing and Urban Development
Via electronic submission

RE: Housing and Community Development Act of 1980: Verification of Eligible Status
Docket No. FR-6524-P-01

The City of New York ("City") submits this comment in opposition to a proposed rule by the U.S. Department of Housing and Urban Development ("HUD"), 91 Fed. Reg. 8,151 (Feb. 20, 2026) (the "Proposed Rule"), that would eliminate financial assistance under certain housing programs, including Public Housing and Section 8, to families with mixed immigration status ("mixed families"), and that would make the process for verifying the citizenship or eligible immigration status of persons seeking such assistance more burdensome.[1] HUD asserts that the Proposed Rule is more aligned with the governing statute and is necessary to ensure that housing assistance is only made available to eligible persons. On the contrary, the Proposed Rule overturns longstanding regulations that reflect clear congressional directives that balance competing concerns with verifying eligibility for assistance and that prioritize preserving family unity in housing programs. The Proposed Rule is thus contrary to law. It is also arbitrary in that HUD fails reasonably to explain its dramatic policy changes and fails to consider significant reliance interests in existing policies and the broader impacts the proposed policies will have on local government services and public health. The Proposed Rule would have a significant negative impact on localities around the country, particularly New York City, which is home to the largest public housing agency, the New York City Housing Authority ("NYCHA"), and the largest municipal housing agency, the New York City Department of Housing Preservation and Development ("HPD"). The City urges HUD to withdraw the Proposed Rule in full.

I. BACKGROUND ON THE PROPOSED RULE

The Proposed Rule amends HUD's regulations implementing Section 214 of the Housing and Community Development Act of 1980 (the "Act"), as amended and codified at 42 U.S.C. § 1436a ("Section 214"),. The Act prohibits HUD from making housing assistance available to noncitizens unless they are a resident of the United States and fall into one of six enumerated immigration statuses.[2] The Act also prescribes the process for verifying the eligibility of citizens and noncitizens. In short, all citizens and eligible noncitizens must make a declaration under

[1] NYCHA, HPD, and the City's Department of Health and Mental Hygiene, Department of Social Services, and Mayor's Office of Immigrant Affairs contributed to this comment.

[2] 42 U.S.C. § 1436a(a).

penalty of perjury stating their eligible status.[3] The Act further authorizes, but does not require, HUD to request additional documentation of citizenship, such as a passport.[4] The Act imposes no documentation requirement on persons 62 years of age or older who declare eligibility as a noncitizen.[5] With respect to persons under 62 years of age who declare eligibility as a noncitizen, however, the Act sets forth additional verification processes, including that such applicants submit supporting documentation of eligible immigration status to the public housing agency ("PHA"), that the PHA verify such applicant's immigration status with the U.S. Department of Homeland Security ("DHS"), that such applicants be afforded the opportunity to contest the verification determination by DHS, and that the PHA extend assistance in certain circumstances while verification is pending.[6]

The Act allows for assistance to families in which the ineligibility of one or more family members "has not been affirmatively established" in accordance with the above requirements.[7] Specifically, in cases where at least one family member establishes citizenship or eligible immigration status and the ineligibility of other family members has not been affirmatively established, housing assistance made available to the family "shall be prorated," based on the number of eligible family members, as compared to the total number of family members.[8]

HUD's implementing regulations, codified at 24 C.F.R. Part 5, Subpart E, have been in effect in substantially similar form since 1996.[9] The regulations track the Act, including by setting forth the different verification requirements for citizens and noncitizens and allowing for prorated assistance to mixed families. Specifically, prorated assistance is available for families with members who "do not contend" they have an eligible immigration status, provided that such family members are identified in writing to the PHA (the "do not contend" provision).[10]Also consistent with Act, the regulations require that a PHA only verify the immigration status of eligible noncitizens under 62 years old using the Systematic Alien Verification for Entitlements ("SAVE") system maintained by the United States Citizenship and Immigration Services ("USCIS").[11] The regulations provide that persons are required to submit evidence of eligible status "only one time during continuously assisted occupancy" in the housing programs.[12]

The Proposed Rule would essentially eliminate the verification distinctions in the Act and would instead require that a PHA verify the status of all persons in SAVE, including, if necessary,

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[3] 42 U.S.C. § 1436a(d)(1).

[4] *Id.*

[5] *See generally* 42 U.S.C. § 1436a.

[6] 42 U.S.C. § 1436a(d).

[7] 42 U.S.C. § 1436a(b)(2).

[8] *Id.*

[9] *See* Proposed Rule at 8,152. *See also* 61 Fed. Reg. 5,202; 61 Fed. Reg. 13,616.

[10] 24 C.F.R. § 5.508(e).

[11] *Id.*

[12] 24 C.F.R. § 5.508(g)(5)

by submitting supporting documentation of citizenship or eligible immigration status to SAVE.[13] The Proposed Rule appears to impose this requirement not only on new applicants, but also on existing tenants.[14] The Proposed Rule would also discontinue assistance to mixed families, except in limited, temporary circumstances.[15] Families applying to or currently in covered housing programs would be required to document and verify the immigration status of every household member. Households containing family members without eligible status would be required to separate such that only the members with eligible status could remain in the home, or the entire household's assistance would be terminated, with limited exceptions. In light of this proposed change, the Proposed Rule would also eliminate the "do not contend" provision.[16]

To implement these changes, the Proposed Rule would generally require that, within 30 days of the Proposed Rule's effective date, PHAs notify all mixed families in an assisted unit of the requirement to demonstrate eligibility as a citizen or eligible noncitizen and require that such documentation be provided to the housing agency within 90 days of the Proposed Rule's effective date.[17] All other tenants who have not submitted evidence of citizenship or eligible immigration status would be required to do so at their next annual or interim reexamination of income and household composition.[18] The Proposed Rule requires that notice to applicants and tenants of these evidentiary requirements also state that the PHA, as well as a project owner, "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."[19]

According to the preamble, the Proposed Rule would bring HUD's regulations into greater alignment with the wording and purpose of the Act and into alignment with the current Administration's priorities of "ensur[ing] that taxpayer-funded benefits exclude any ineligible alien."[20] For the reasons discussed herein, the Proposed Rule in fact contradicts the wording of the statute and subverts its intended purpose.

II. THE PROPOSED RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT BECAUSE IT IS NOT IN ACCORDANCE WITH GOVERNING LAW.

HUD's Proposed Rule violates the Administrative Procedure Act ("APA") because it conflicts with Congress's intent, as expressed in the plain text and legislative history of Section 214,[21] to allow mixed families to live together with prorated assistance and to provide distinct verification processes for persons based on citizenship and age. An agency "does not have the

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[13] Proposed Rule at 8,153, 8,167 (amending 24 C.F.R. § 5.512)

[14] *Id.*

[15] *Id.* at 8,153-8,154.

[16] *Id.* at 8,153.

[17] *Id.* at 8,166 (amending 24 C.F.R. § 5.508(e)-(f))

[18] *Id.* (amending 24 C.F.R. § 5.508(f))

[19] *Id.* (amending 24 C.F.R. § 5.508(e))

[20] *Id.* at 8,153.

[21] *See* 5 U.S.C. § 706.

power to adopt a policy that directly conflicts with its governing statute."[22] Agency action is "not in accordance with law" where it "ignores the plain language of the statute," renders statutory language "superfluous," or "frustrate[s] the policy Congress sought to implement" in the statute.[23] The Proposed Rule also violates the U.S. Constitution.

a) The Proposed Rule Is Contrary To The Plain Text Of Section 214.

HUD's primary purported justification for the Proposed Rule is to bring its regulations into "greater alignment with the wording and purpose of" Section 214,[24] but the Proposed Rule does just the opposite by ignoring the unambiguous plain language of Section 214.

Section 214 uses mandatory language regarding proration: for mixed families, federal assistance "shall be prorated."[25] The statute does not say that the agency "may" prorate, or that it shall only prorate for a specified period. Further textual evidence supporting the availability of prorated assistance to mixed families is found in 42 U.S.C. § 1436a(d)(6), which requires termination of assistance for individuals who knowingly allow ineligible individuals to live in their unit. Notably, this provision does not apply to mixed families as the amount of financial assistance they receive reflects the fact that the presence of ineligible family members are *known* to HUD.[26]

HUD's contention that ineligible family members derive an improper benefit from residing in an assisted unit also reflects a misunderstanding of what it means to receive "financial assistance" under Section 214. The Act provides that HUD "may not make *financial assistance* available for the benefit of any" noncitizen unless such noncitizen falls into one of the enumerated immigration status categories. The word "financial" modifying "assistance" refers to monetary assistance.[27] Section 214 does *not* say that ineligible family members may not enjoy the nonmonetary benefit of living in a home occupied by a mixed family; indeed, Section 214 expressly contemplates that they will do just that, and the proration system ensures that ineligible noncitizens do not receive any financial assistance. HUD's stated belief that a nonmonetary benefit amounts to improper financial assistance is not entitled to judicial deference, and does not survive the scrutiny of a plain text reading of Section 214.[28]

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[22] *Maislin Indus., U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 134-35 (1990); *see also United States v. Mead*, 533 U.S. 218, 228-29 (2001) (agency action cannot be "manifestly contrary to the statute").

[23] *Pacific Northwest Generating Coop v. Department of Energy*, 580 F.3d 792, 806 (9th Cir. 2009).

[24] Proposed Rule at 8,153.

[25] 42 U.S.C. § 1436a(b)(2) ("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").

[26] 42 U.S.C. § 1436a(d)(6) ("This provision 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.").

[27] Cambridge Dictionary defines "financial assistance" as "money that is given to someone in order to help them." *Financial Assistance*, Cambridge Advanced Learner's Dictionary & Thesaurus, https://dictionary.cambridge.org/us/dictionary/english/financial-assistance (last visited Apr. 13, 2026).

[28] *See Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 412-413 (2024).

b) The Legislative History Makes Clear Congress's Intent To Keep Mixed Families Together.

Congress has been consistent in seeking to preserve the integrity of families in housing programs. Restriction of housing assistance to those without eligible immigration status began as a limited and targeted statutory measure. In the original version of Section 214 in 1980, Congress specified that "nonimmigrant student-aliens" could not receive federal housing assistance. Congress later expanded the categories of ineligible noncitizens over subsequent sessions. HUD responded to these amendments with a series of proposed implementing regulations, most notably a proposed rule in 1986 (the "1986 Proposed Rule") that was strikingly similar to the current Proposed Rule.[29] The 1986 Proposed Rule would have required that every family member submit evidence of citizenship or eligible status and, in the event any individual residing in the household failed to submit such evidence, the 1986 Proposed Rule would have required housing agencies to terminate assistance or tenancy.[30] The 1986 Proposed Rule – like the current Proposed Rule – would have forced impacted households to separate or lose assistance altogether.

Ultimately, HUD did not finalize the 1986 Proposed Rule as a result of a class-action lawsuit and expected Congressional action.[31] Indeed, in 1988, Congress intervened by amending the Act to protect those individuals who would have been impacted by the 1986 Proposed Rule by adding a subsection, titled "Preservation of Families," which prioritized protection of families already receiving housing assistance. This amendment established an emergency safeguard against the risk of mass evictions of families by granting housing agencies authority to continue to assist families that contained ineligible members. In taking such action, Congress made clear its intent to preserve the integrity of mixed families, by allowing all the members of the family to live together.

A 1987 House Report provides additional evidence of congressional intent to keep families together:

> The injustice that would be caused by implementation of [the Act] 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 the Department [of Housing and Urban Development] has incorrectly interpreted the original Act. The modifications are intended to clarify ***the original intent of***

[29] Restriction on Use of Assisted Housing, 51 Fed. Reg. 42,088-02 (November 21, 1986).

[30] 51 Fed. Reg. 11,198-01 (April 1, 1986).

[31] *Id.*

Congress that families in which at least one person is eligible are not disqualified and that the rules not be applied retroactively.[32] (Emphasis added.)

Congress thus made it clear that Section 214 was never intended to divide families, but was instead designed to prevent family separation and, further, that Section 214 does not render a family ineligible for any assistance merely due to the presence of individuals who cannot demonstrate their individual eligibility for assistance.[33]

In 1995, HUD implemented prorated restrictions on assistance for mixed families.[34] HUD's delay in taking such regulatory action was based, at least in part, on concern that HUD lacked authority to reduce financial assistance for mixed households. For example, in 1988, HUD had considered that separate statutory provisions regarding prohibitions on the delay, denial, reduction, or termination of assistance pending verification also precluded prorated reductions of assistance in general.[35] In the notice of proposed rulemaking for the 1995 Rule, HUD determined that it not only had the authority to permit prorated reductions of assistance, but that proration was in fact required by the Act for mixed families.[36] HUD emphasized that "proration of assistance *must* be offered to eligible mixed families."[37] The 1995 Rule also established the "do not contend" provision that permitted a family member to elect not to contend an eligible immigration status, in which case such individuals would also not receive federal assistance.[38]

Any remaining questions as to HUD's authority to prorate assistance were resolved in 1996 when Congress amended Section 214 to codify proration of housing assistance directly into the statute.[39] This Congressional endorsement of HUD's regulations confirmed that prorating assistance aligned with the purpose of the Act. Specifically, Congress codified HUD's regulations by defining financial assistance as prorated based on the number of eligible family members.[40] The model implemented by HUD in 1995 and confirmed by Congress in 1996 is the process that has been applied in the thirty years since and that HUD now intends to uproot and reverse entirely.

HUD cannot now ignore the plain text and legislative history of the Act. It is clear Congress did not intend to cause the evictions or family separations the Proposed Rule would cause given

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[32] H.R. No. 100-122(I), at 49-50 (1987) (emphasis added).

[33] *Id.*

[34] 60 Fed. Reg. 14,822 (March 20, 1995).

[35] 53 Fed. Reg. 41,046-47 (October 19, 1988).

[36] 59 Fed. Reg. 43,904 (Aug. 25, 1994).

[37] 60 Fed. Reg. 14,822 (March 20, 1995) (emphasis added).

[38] *Id.*

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

[40] In general, no family may receive financial assistance prior to the affirmative establishment and verification of the eligible status of at least one family member. For purposes of eligibility of families, eligibility means the eligibility status of each family member. *See* 42 U.S.C. § 1436a(i)(1) and 42 U.S.C. § 1436a(i)(3).

Congress's response to similar proposed regulations nearly forty years ago and Congress' endorsement, through legislation, of proration for mixed families. Crucially, Congress did not in 1996, nor at any point since, limit the definition of family eligibility temporarily, nor limit it based on a requirement that each *and every* family member be eligible. Permitting mixed families to reside in federally-assisted housing on a prorated basis aligns with Congressional intent.

c) HUD's Reimagining Of The Verification Process Is Not Supported by Section 214.

By purporting to establish a "more uniform" verification process under the Proposed Rule,[41] HUD violates the basic principle of statutory construction that a statute be read so as to give meaning and effect to each word used.[42] Likewise, HUD's application of Section 214 ignores the principle that any omission in a statute is presumed to be intentional.[43]

Section 214 draws clear distinctions between verifying an applicant's citizenship or eligible immigration status. As discussed in detail above, Section 214 requires that noncitizens under 62 years of age provide supporting documentation of their eligible status, but excludes noncitizens who are 62 years of age and older from this requirement.[44] Section 214 also provides that PHAs use an automated system like SAVE to verify the eligibility of noncitizens under 62 years of age and that these persons be afforded a process with DHS to challenge the verification determination.[45] That is, Section 214 omits SAVE verification for citizens and older noncitizens.

The legislative record makes clear that these statutory distinctions were intentional. For example, in enacting these verification processes, Congress expressed concerns about the burden associated with documentation requirements on older adults.[46] Congress understood the obstacles that older adults did – and still do – face in obtaining documents, including technological difficulties; inability to access government offices or pay fees to obtain documentation; and barriers to obtaining adequate documentation if no birth certificate had ever been issued.[47]

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[41] Proposed Rule at 8,153.

[42] *See Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017) (noting that under "the so-called surplusage canon [courts presume] that each word Congress uses is there for a reason"); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (noting that courts are "obliged to give effect, if possible, to every word Congress used").

[43] *See Smaldone v. Senkowski*, 273 F.3d 133, 137 (2d Cir. 2001), *cert. denied*, 535 U.S. 1017 (2002) (stating the principle that, when particular language is included in one section of a statute but omitted from another, it is generally presumed that the omission is intentional).

[44] *See* Section I, *supra*, at pp. 1-2.

[45] *Id.*

[46] Impact Of An Alien Verification System On Assisted Housing Programs Wednesday, August 6, 1986 House Of Representatives, Subcommittee On Housing And Community Development, Committee On Banking, Finance and Urban Affairs, and Select Committee On Aging, pg. 2 ("elderly persons, aged 62 years or older, would only have to certify their citizenship status; which is what we do in every other Federal program").

[47] Ina Jaffe, *For Older Voters, Getting The Right ID Can Be Especially Tough*, NPR, Sept. 7, 2018, https://www.npr.org/2018/09/07/644648955/for-older-voters-getting-the-right-id-can-be-especially-tough.

With this Proposed Rule, HUD appears to take the incorrect position that the statutory framework is advisory and that it can thus reimagine the verification process. Accordingly, HUD seeks to impose the same documentation requirements on all eligible noncitizens regardless of age, to require SAVE verification not only for noncitizens, but also for citizens, and to eliminate the process by which a person can contest a DHS verification determination. The "more uniform" verification processes in the Proposed Rule, however, are not supported by the statute.

d) The Proposed Rule Is Unconstitutional.

If implemented, the Proposed Rule will cause HUD to deny benefits to eligible U.S. citizen children based solely on the ineligible immigration status of their parents while eligible U.S. citizen children whose parents are citizens or eligible noncitizens will receive benefits. This arbitrary distinction in the treatment of U.S. citizen children is unconstitutional.[48] Heightened scrutiny has been applied to government actions that penalize children for the conduct of their parents and risk significant adverse consequences to the children.[49] Nearly half of all people in mixed families are U.S. citizen children.[50] Under the Proposed Rule, PHAs would be forced to evict U.S. citizen children based solely upon their parents' status. The Proposed Rule would force these mixed families to make drastic decisions that may change their family makeup or subject the entire family to potential homelessness. Thus, the Proposed Rule would harm U.S. citizen children of mixed families disproportionately and irreparably, solely due to the ineligible status of a parent or family member. These extreme consequences fail to meet the heightened scrutiny standard and therefore would present constitutional risks if implemented as written.

III. THE PROPOSED RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT BECAUSE IT IS ARBITRARY AND CAPRICIOUS.

Under the "arbitrary and capricious" standard, HUD is required to examine relevant data and articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made," based upon relevant factors.[51] An agency rule is arbitrary and capricious if the agency has: relied on factors that Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[52] Finally, an agency rule is

[48] *Plyler v. Doe,* 457 U.S. 202, 224 (1982) (holding that "directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice").

[49] *See Lewis v. Thompson*, 252 F.3d 567, 591 (2d Cir. 2001) (applying two-prong *Plyler* test to federal law restricting Medicaid for children of noncitizens who are not lawfully present). *See also Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 459 (1988) (developing two-prong *Plyler* test).

[50] *Administration Plan Targeting Immigrants Would Take Away Rental Assistance, Create New Barriers*, Center on Budget and Policy Priorities (December 12, 2025), available at: https://www.cbpp.org/research/housing/administration-plan-targeting-immigrants-would-take-away-rental-assistance-create.

[51] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

[52] *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43-44.

arbitrary and capricious if it is pretextual.[53] Applying these standards demonstrates that, if finalized, the Proposed Rule would violate the APA.

a) HUD's Proposal To Eliminate Mixed Status Households Is Neither Reasonable, Nor Reasonably Explained.

HUD's contention that mixed families have been receiving benefits under the Act to which they are not entitled is not rational. In mixed households, HUD is not subsidizing the rent for every household member because not all members were able to prove eligibility or chose not to declare their eligibility. When a household's rental assistance is prorated, that household is likely to have a higher rent burden than households with a full voucher or full public housing assistance. The income for the unassisted members of the household counts towards household income, but their portion of the rent is not paid by HUD. Consequently, HUD ultimately provides mixed family households with a lower subsidy than other households, because they are not receiving housing benefits for household members who do not demonstrate eligible immigration status.

The Proposed Rule reflects a fundamental misunderstanding of the Act and an absence of legitimate justification for the Proposed Rule. Indeed, as previously explained, Congress stated that the 1988 amendments to the Act were intended to clarify its intention that "***families in which at least one person is eligible are not disqualified***."[54] A decade later, Congress chose not to disqualify mixed families and, instead, prorated assistance to those households based on the ratio of eligible members to noneligible members.[55]

The crux of the irrationality the Proposed Rule lies in the fact that a policy that ostensibly targets ineligible noncitizens would disproportionately harm U.S. citizens who are eligible for financial assistance. Nationwide, the Proposed Rule would impact at least 79,000 people, with the majority of those who will be negatively impacted being U.S. citizens or legal residents who are eligible for public housing or federal subsidy irrespective of the Proposed Rule.[56] In mixed families, approximately 66% of the family members are U.S. citizens or legal residents.[57] Moreover, two-thirds of those eligible U.S. citizens—around 37,000—are children.[58]

HUD's discussion of the potential impacts of this policy change on these families is an exercise in misdirection. HUD acknowledges some burden on "existing tenants in HUD housing who have previously elected the 'do not contend' provision, have submitted no documentation to date, have documentation proving their eligibility, and wish to continue to receive HUD assistance."[59] Because the number of tenants who fall into this precise category is low

[53] *Saget v. Trump*, 375 F. Supp. 3d 280, 361 (E.D.N.Y. 2019) (citing *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 176-79 (4th Cir. 2018)).

[54] *See* note 33 *supra*.

[55] *See* pp. 6-7, *supra*.

[56] *See* HUD, Regulatory Impact Analysis: Housing and Community Development Act of 1980: Verification of Eligible Status ("RIA"), available in Docket No. HUD-2026-0199, at 8-9.

[57] *Id.*

[58] *Id.*

[59] Proposed Rule at 8,163.

(approximately 730 tenants, according to HUD), HUD concludes that the "related burdens are thus relatively low, for tenants, families, and responsible entities."[60] That is, HUD focuses on the families that will be able to continue to stay together and fails to acknowledge the very significant burdens on the thousands of families who will be forced to separate or leave assisted housing.

b) HUD's Proposal To Establish New Verification Processes Is Neither Reasonable, Nor Reasonably Explained.

HUD offers an incoherent rationale for the new verification processes in the Proposed Rule. In the same sentence, HUD asserts that the Proposed Rule would better align regulations with the Act and that the verification changes would provide a more uniform process between citizens and eligible noncitizens.[61] Yet, to the extent this process is not presently uniform, that is a result of the Act itself, which draws distinctions between processes for citizens, eligible noncitizens under 62 years, and eligible noncitizens 62 years of age and older. These statutory distinctions are intentional. As noted above, the legislative record makes clear that Congress recognized that a documentation requirement would be burdensome for seniors and thus decided that this population would only be required to submit a declaration claiming eligible status.[62] Similarly, the Act makes clear that the only population whose eligibility would be verified in an automated system like SAVE is eligible noncitizens under 62 years old.[63] Notwithstanding this statutory framework, HUD now seeks to impose documentation requirements on all applicants and tenants and to require PHAs to verify their eligibility in SAVE. In asserting faithfulness to the Act and ignoring it all the same, HUD is acting in arbitrary manner.

HUD's position that the change is necessary to ensure that only eligible persons receive assistance is also not reasonable. HUD's own analysis shows that nearly all of the more than 8.8 million persons in assisted households are in fact eligible.[64] Specifically, earlier this year, HUD reported that a recent audit it conducted with DHS identified around 2% of "tenants with incomplete or unknown eligibility verification."[65] Nonetheless, under this Proposed Rule, HUD now seeks to impose a blunt verification method burdening 100% of applicants and tenants based on an unsupported belief that such a method is necessary.

HUD ignores the impact this change in policy would have on older persons, despite the fact that Congress had expressed a special solicitousness toward this population. Moreover, existing HUD regulations generally provide that only *applicants* for housing assistance are required to provide evidence of eligible status and that such evidence be submitted "only one time

[60] *Id.* at 8,163, n. 47.

[61] *Id.* at 8,153.

[62] *See* pp. 1-2, *supra*.

[63] 42 U.S.C. § 1436a(d)(3).

[64] *See* RIA, at 9.

[65] HUD Moves to Close "Mixed Status Households" Roommate Loophole Illegals, Ineligibles, and Fraudsters: Pack Your Bags, https://www.hud.gov/news/hud-no-26-015;'Cleaning House': HUD Orders Immediate Citizenship Verification for All Tenants in HUD-Funded Housing Nationwide, https://www.hud.gov/news/hud-no-26-008.

during continuously assisted occupancy" under any covered housing program.[66] Thus, this change in policy works a particular hardship on older persons currently in assisted housing, who for years, or even decades, relied on eligibility determinations made under HUD's longstanding policies and, as a result, may now be even less able to obtain acceptable documentation of eligible status.

Similarly, HUD unduly minimizes the impact this change in policy would have on applicants and tenants who are citizens. It is well established that a large number of Americans do not have easy access to citizenship documents.[67] HUD instead vaguely asserts that public housing agencies *typically* already receive and review citizenship documentation for various purposes, but HUD fails to acknowledge that such documentation may be of little use if primary verification via SAVE fails. In that scenario, PHAs would be required to receive and review unexpired documentation in original or certified form. Given that existing tenants could have been receiving housing assistance for years, if not decades, it is possible that the documentation in the PHA's possession is expired, which would shift the burden to existing tenants to produce acceptable documentation. In this way, HUD also ignores the reliance interests of these tenants in HUD's longstanding policies regarding verification.

c) HUD Failed To Account For The Substantial Costs Associated With Evicting Individuals and Families and Creating Housing Instability, Homelessness, Overcrowding, and Relocation to Substandard Housing.

Forcing housing agencies and landlords to terminate federal housing assistance to mixed families would require families either to separate from the family member who is ineligible so as not to disrupt the housing assistance or to leave their assisted housing unit in favor of an unstable housing alternative or a homeless shelter, which would exacerbate the affordable housing crisis in states and localities nationwide.

Removing the ability to prorate assistance long-term means that the City's housing agencies would not be able to serve the eligible members of mixed families through the Public Housing or the Section 8 programs. Furthermore, these changes would result in fewer families being assisted in the Section 8 program overall because prorated assistance includes a lower subsidy per household, allowing the agencies to serve more families. Without additional funding to cover increased costs, the number of households served by the Section 8 program would shrink.

Because HUD's housing assistance programs serve very low-income, vulnerable New Yorkers, terminating assistance for mixed families and not being able to provide public and affordable housing to other families will leave them with few housing options in high-cost markets with low vacancy rates. As a result, mixed families living in project-based programs and with vouchers would face significant rent increases or face eviction.

The result would be families moving to increasingly precarious housing situations, including overcrowded homes or those with substandard living conditions, households spending

[66] 24 C.F.R. § 5.508(g).

[67] Jude Joffe-Block, *The House has passed the Trump-backed SAVE Act. Here are 8 things to know*, NPR, April 10, 2025, https://www.npr.org/2025/03/12/nx-s1-5301676/save-act-explainer-voter-registration.

much more on rent at the expense of other necessities, and homelessness. Such results will inevitably shift costs to other systems in the City and other localities, such as shelters and crisis services. When mixed families become homeless it will place a burden on the local governments, including the City, to provide emergency shelter. Moreover, because thousands of children will be impacted by the Proposed Rule, local child welfare agencies will undoubtedly be forced to address the repercussions of family separations and inadequate housing conditions for children.

d) HUD Failed To Account For The Negative Impacts on Public Health.

HUD failed to account for the public health consequences of this Proposed Rule. This policy will increase housing instability and overcrowding among families who would no longer be deemed eligible for assistance due to immigration status, directly impacting their overall health and wellbeing. Stable housing is both a social determinant of health and a human right.[68] Housing instability leads to numerous challenges including having trouble paying rent, overcrowding, moving frequently, or spending a disproportionate share of household income on housing. These difficulties place a significant strain on families, negatively impacting both physical and mental health while also increasing economic burden, forcing families to make difficult tradeoffs with necessary goods like food.[69] Cost burdens remain the primary driver of housing insecurity, and individuals experiencing housing insecurity are at a higher risk for chronic health issues, including elevated rates of diabetes, hypertension, and asthma.[70]

Additionally, HUD failed to account for the mental health consequences of the Proposed Rule. Disruptions in housing access of any kind can negatively impact both immediate and long-term health outcomes including increased stress, anxiety, and depression among both adults and children.[71] For children in particular, housing insecurity can contribute to an increased exposure to adverse childhood experiences, which are strongly associated with long-term negative impacts on health, opportunity, and well-being.[72] Recent analyses further demonstrate that eviction, a

[68] DiNapoli, T.P. (2024 February). New Yorkers in Need: The Housing Insecurity Crisis. Office of the New York State Comptroller, https://www.osc.ny.gov/reports/new-yorkers-need-housing-insecurity-crisis.

[69] Office of Disease Prevention and Health Promotion. (n.d.). Housing Instability. Healthy People 2030. Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability; DiNapoli, T.P. (2024 February). New Yorkers in Need: The Housing Insecurity Crisis. Office of the New York State Comptroller, https://www.osc.ny.gov/reports/new-yorkers-need-housing-insecurity-crisis.

[70] DiNapoli, T.P. (2024 February). *New Yorkers in Need: The Housing Insecurity Crisis.* Office of the New York State Comptroller, https://www.osc.ny.gov/reports/new-yorkers-need-housing-insecurity-crisis; Office of Disease Prevention and Health Promotion. (n.d.). *Housing Instability*. Health People 2030. Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability.

[71] Office of Disease Prevention and Health Promotion. (n.d.). *Housing Instability*. Health People 2030. Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability.

[72] Centers for Disease Control and Prevention. (2026, March 2). About adverse childhood experiences, https://www.cdc.gov/aces/about/index.html; Yoo, J., Fisher, S., & Kim, J. (2026). Residential Mobility, Housing Instability, Adverse Childhood Experiences, and the Moderating Role of Neighborhood Contexts. *International Journal of Environmental Research and Public Health*, *23*(3), 326, https://doi.org/10.3390/ijerph23030326.

severe form of housing instability, is linked to worsened birth outcomes, increased mental health hospitalizations, and higher all-cause mortality.[73] The Proposed Rule would limit access to housing assistance for mixed-status households and, therefore, lead to worse physical and mental health outcomes for mixed-status families.

e) HUD's Estimates Of The Impact Of The Proposed Rule On PHAs Are Not Reasonable.

HUD estimates the impact of the Proposed Rule on PHAs will be low. That estimate is not reasonable. In eliminating assistance to mixed families, HUD focuses on the purportedly minimal impacts to PHAs of verifying eligibility of the infinitesimally small number of "existing tenants in HUD housing who have previously elected the 'do not contend' provision, have submitted no documentation to date, have documentation proving their eligibility, and wish to continue to receive" housing assistance. HUD ignores the fact that PHAs would need to undertake a whole range of actions with respect to the remaining tens of thousands of mixed status households, including affording tenants processes around terminating assistance and transferring smaller households to smaller units. Moreover, as noted above, rather than transfer assistance from mixed-status families to fully-eligible families, the Proposed Rule may make it more difficult for PHAs to assist fully-eligible families at all due to the fact that a mixed-status household that becomes a fully-eligible household would see an increase in their subsidy. As many Section 8 programs across the country currently face a shortfall of funds, this unaccounted-for increase in subsidy costs will further prevent PHAs in shortfall from assisting other families on their waiting lists.[74]

HUD also substantially underestimates the administrative burdens resulting from the proposed verification requirements. A PHA would be required to verify via SAVE the citizenship status of existing tenants and to have on file supporting citizenship documentation from these tenants. Verification capacity for U.S. citizens was only recently added to SAVE in May 2025, and HUD even admits SAVE has limitations on the types of documentation it can review.[75] For example, SAVE still cannot review or process birth certificates or U.S. passports.[76] Therefore, it can reasonably be expected that PHAs could run into issues during the primary verification of U.S. citizen tenants and applicants. If primary verification fails, secondary verification through submission of additional documents to SAVE would impose additional notice requirements on PHAs while creating unnecessary friction points that may impede vulnerable low-income U.S. citizens from accessing critical housing assistance in the first place. The cumulative effects of these administrative burdens will force PHAs to dedicate scarce administrative resources to an unnecessary verification system entirely of HUD's own making, at the expense of processing applications for low-income American citizens.

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[73] Himmelstein, G., & Desmond, M (2021, April 1). *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic.* Health Affairs. https://www.healthaffairs.org/content/briefs/eviction-and-health-vicious-cycle-exacerbated-pandemic.

[74] *See* Notice PIH 2025-28, *Cost-Savings Measures in the Housing Choice Voucher (HCV) and Project Based Voucher (PBV) Programs* (November 17, 2025).

[75] Proposed Rule at 8,159.

[76] *Id.*

HUD estimates that only 1% of existing tenants who declared as citizens would need to provide documentation to the PHA under the Proposed Rule, as the remaining such tenants have already presumably provided such documentation for other purposes.[77] The Proposed Rule, however, appears to require that PHAs review all household files to identify that 1%. This additional administrative requirement would increase the risk of improper terminations when people do not have the documents accessible to them, which may have a disproportionate impact on vulnerable populations, such as foster children or victims of domestic violence who may need to coordinate document collection with the other parent. Agencies will see an additional burden in administering these processes, and owners may experience disruptions to payments if subsidies are reduced or terminated, even if they are later restored.

f) HUD Failed To Account For The Impact On Section 8 Property Owners.

HUD has failed to account for the impact of the Proposed Rule on the continued operation of the Section 8 program, which provides housing assistance for hundreds of thousands of New Yorkers. If a mixed household decides not to remove a household member who cannot demonstrate eligible immigration status, that household would no longer be eligible for participation in the Section 8 program under the Proposed Rule. Consequently, the property owner would no longer receive the subsidy share of the rent from the PHA. The former Section 8-participating family – by definition a low- or very low-income household – is unlikely to be able to pay the full contract rent, foreseeably resulting in the initiation of a nonpayment or holdover proceeding by the property owner. HUD did not account for property owners incurring eviction-related costs and lost rent revenue. Instead, HUD estimated that the *responsible entity* (i.e. PHAs) would bear the costs of evicting terminated households, apparently focusing their analysis only on Public Housing impacts while failing to appropriately consider the Section 8 Program. [78]

In many jurisdictions, including New York, evicting former tenants in Housing Court is often a lengthy, complex, and expensive process.[79] As a result, a Section 8 property owner, through no fault of their own, may find themselves unable to recover possession of their unit for an extended period while incurring significant legal costs and losing critical rent revenues.

Given the rising costs of owning and operating multifamily properties, the risk of lengthy and costly legal proceedings, as well as the general uncertainty the Proposed Rule presents, may discourage current and potential property owners from providing housing to Section 8 participants. Moreover, evicting mixed status families from affordable housing developments may jeopardize the financial viability of entire developments, while making property owners less likely to partner with PHAs in building future affordable housing. Undermining this longstanding and successful program – a potential consequence apparently not considered – provides an additional reason the Proposed Rule should not be implemented.

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[77] Proposed Rule at 8,163, n. 48.

[78] *See* RIA, at 26 ("Responsible entities would bear the costs for those households that require more rigorous enforcement of the proposed regulation through formal eviction.").

[79] *See e.g.* Adam Lehodey*, New York City Landlords Are Trapped in Housing Court Hell,* City J. (May 15, 2025), https://www.city-journal.org/article/tenants-landlords-new-york-city-housing-courts (describing difficulty and expenses related to evicting occupants in N.Y. Housing Court)

g) The Proposed Rule Is Pretext For Discriminating Against Noncitizens And Their Eligible Family Members.

The Proposed Rule is pretext for discriminating against a class of persons HUD disfavors, namely, noncitizens and their eligible family members who reside with them. Among other things, HUD announced the Proposed Rule by declaring that they are closing the mixed families' "loophole" and that its time for the "fraudsters" in mixed families to "pack your bags."[80] Such overwrought language is untethered to law and current practice because, again, Congress sanctioned the provision of prorated assistance to mixed families and the presence of ineligible citizens in such families is known to HUD. Additionally, as noted above, by focusing its analysis on a few hundred noncitizens in mixed families that are eligible for assistance, HUD simply ignores the real human costs of the Proposed Rule on the tens of thousands of noncitizens in mixed families who would be unable to establish immigration status, mischaracterizing them as "frauds" who should pack their bags and leave the country.

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For all of the reasons above, the City urges HUD not to finalize the Proposed Rule, and avoid the damaging impacts on vulnerable families and substantial fiscal impacts on cities and states across the country.

[80] HUD Moves to Close "Mixed Status Households" Roommate Loophole Illegals, Ineligibles, and Fraudsters: Pack Your Bags, https://www.hud.gov/news/hud-no-26-015.