



July 8, 2019

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Office of the General Counsel, Rules Docket Clerk
U.S. Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

RE: Notice of Proposed Rulemaking, 24 CFR Part 5; HUD Docket No. FR-6124-P-01, RIN 2501-AD89, Comments in Response to Proposed Rule Making of Housing & Community Development Act of 1980 Verification of Eligible Status

Comments of Volunteers of Legal Service

Volunteers of Legal Service (“VOLS”) appreciates this opportunity to submit these comments in response to the rules proposed by the U.S. Department of Housing and Urban Development (“HUD”) in the above captioned dockets. These proposed regulations would prohibit any household where a member does not have eligible immigration status from receiving housing assistance. In other words, families with a non-immigration eligible household member will have to choose between receiving housing assistance and keeping their family together. The proposed rules also require the verification of eligible immigration status for every member of the household, whereas in the past household members over the age of 62 had been exempt from this requirement. VOLS opposes the adoption of these proposed rules because we believe it will cause grievous harm to families in our community by increasing homelessness, decreasing educational attainment, worsening health outcomes, and causing havoc for families with immigrant members who may be in the process of gaining legal status, but because of long delays in processing may be harmed by these proposed regulations.

We believe that the clients of two of VOLS’ Projects, the Elderly and Immigration Projects, in particular will be detrimentally impacted by these proposed regulatory changes. 5

U.S.C. § 654 requires that federal agencies take into consideration the impact that proposed rules will have on families, yet we believe that HUD has failed to meaningfully take into consideration the impact this proposal will have on the families we serve and that has compelled us to submit these public comments.

The Mission of Volunteers of Legal Service

The mission of VOLS is to develop projects to provide pro bono civil legal services to benefit low-income people in New York City. Since 1984, VOLS has identified areas of legal need, created projects to meet these needs, and recruited and trained volunteer lawyers to provide the needed legal services. By providing pro bono legal services to people in need in our city, we strive to fulfill the highest aspirations of the legal profession. VOLS projects serve these vulnerable New York City populations; children, the elderly poor, incarcerated mothers, immigrant high school students and low income micro-entrepreneurs. We conduct active outreach to the New York City legal community to encourage pro bono work by lawyers. We strive to provide pro bono legal assistance when and where it will be most accessible to our clients, in settings familiar to them, instead of requiring people in desperate need to come to us. We do this by working closely with hospitals, schools, senior centers, and other community organizations, and by integrating pro bono legal assistance into the array of services these organizations already provide.

With over two decades of collective legal services experience, the VOLS Elderly Project staff and other pro bono volunteers provide free legal advice, information, document drafting, and other services to low-income New York City residents aged 60 and over, and to the social

workers and advocates who assist them. These services include direct counseling on critical issues involving housing, government benefits, and consumer debt, and the drafting and execution of wills, powers of attorney, and other essential life-planning documents. The Elderly Project emphasizes outreach to underserved populations with the goal of helping vulnerable seniors stay in their homes. A key aspect of our success is our ability to combine social work resources already available to seniors with pro bono legal services. We work closely with senior centers, share information and communicate regularly by email with over 600 social workers and other advocates in the elder services community, and have a roster of dozens of volunteer lawyers who provide free legal services to our clients.

VOLS' Immigration Project staff has three decades of collective immigration law experience working directly with people who have needed to regulate their immigration status to gain greater security and financial stability for themselves and their families. The people we serve are at various stages along their immigration journey, and include United States citizens and lawful permanent residents hoping to remain or reunify with parents, children, siblings and other family members. We collaborate with New York City schools, community based organizations and health care centers to identify youth who need legal assistance to address a variety of immigration law challenges, which often threaten to disrupt a young person's education and limit her career options and long-term prospects for economic opportunity. Students who lack immigration status do not qualify for federal financial aid for college, most scholarships, and even New York State funded programs intended to support low-income students. Furthermore, once a young person reaches adulthood, if she has not regulated her immigration status, she no longer qualifies for any state funded programs that provide access to

comprehensive health services, and like all individuals who lack immigration status, youth who are unauthorized to work cannot provide for their basic needs.

The Proposed Regulation Harms Children and Families

The proposed regulation fails to take into consideration the fact that, in a mixed-status household, citizen and immigrant family members do not live separate lives. They operate as a social unit. When the legal system serves to marginalize one family member without legal status, all family members are subject to exclusion. The trauma, anxiety and fear faced by family members without status directly impact the U.S. citizens living with them. When an undocumented family member is a parent, a U.S. Citizen child will always live in fear of losing his/her parent to deportation. As a result, U.S. Citizen children of undocumented parents face unique disadvantages. This proposal is a good example of how benefits are curtailed for U.S. Citizens when one family member is undocumented.

5.1 million children in the United States under age 18 live with at least one unauthorized immigrant parent¹. The vast majority of these children -- 79 percent or 4.1 million -- are U.S. Citizens.² These children operate at a disadvantage in a mixed-status family. U.S. citizen children born to undocumented immigrant parents were less likely to be enrolled in preschool. They are more likely to be linguistically isolated, more likely to be limited English proficient, and more likely to be poor. Children born to undocumented parents are entitled to health services and programs, yet are much less likely to access these services because of their parent's

¹ See Randy Capps, Michael Fix, and Jie Zong, *A Profile of U.S. Children with Unauthorized Immigrant Parents*, MIGRATION POLICY INSTITUTE (Jan. 2016), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>

² *Id.*

immigration status³. In 2015, Texas limited the types of identification that parents can use to obtain birth certificates, with the result that some unauthorized immigrant parents are unable to obtain certificates for children born in Texas⁴. While the proposed regulation was intended to target undocumented immigrants, the end result only hurt U.S. Citizen children.

The proposed rule, if enacted, could impact 10,000 people in New York State receiving benefits through the New York City Housing Authority (NYCHA) as part of a mixed status household. Nationally, 55, 000 children and their families would face eviction from their homes or choose to separate in order to keep their subsidies. In effect, if a single undocumented mother living in New York City with federal subsidies has three U.S. citizen minor children, her children face eviction and homelessness. Therefore, most of the people who will lose their housing or become homeless as a result of this rule are American children with legal residency.

There will also be an effect on adult U.S. Citizens who are providing safe homes for undocumented children. A few years ago VOLS represented an immigrant teenager who was effectively orphaned as a toddler in the Caribbean, her father died and she was abandoned by her mother. After being brought to the U.S. by relatives, she was taken in and raised by her loving U.S. Citizen paternal grandmother who lived in public housing in Brooklyn. After many years of this child being undocumented in the U.S., VOLS was able to secure a green card for her as a Special Immigrant Juvenile. If this proposed rule had been in effect when this child was brought to the U.S., her grandmother would not have been able to provide a safe haven for that

³ See Heide Castaneda, Milena Andrea Melo, Health Care Access for Mixed Status Latino Families: Barriers, Strategies, and Implications for Reform, AMERICAN BEHAVIORAL SCIENTIST (Sept. 2014), <https://journals.sagepub.com/stoken/default+domain/I2TJTJn46NCVzNmpC9VZ/full>

⁴ See Manny Fernandez, *Immigrants Fight Texas' Birth Certificate Rules*, N.Y. Times, (September 17, 2015), <https://www.nytimes.com/2015/09/18/us/illegal-immigrant-birth-certificates.html>

abandoned three-year-old, dropped off in New York through no choice of her own.

The proposed regulation is yet another cruel attack by this administration on immigrant families. From April 2018 to June 2018, the administration launched a “zero tolerance policy” aimed at discouraging migrants from crossing into the United States to seek political asylum. More than 2,500 children were forcibly separated from their parents or guardians. A later investigation revealed that the family separation policy started as early as June 2017 which meant that thousands more children were taken from their parents⁵. Despite the Trump Administration’s own ban, family separation continued. In June 2019, hundreds of children were discovered at a facility in Clint, Texas without soap, clean clothes, or adequate food⁶. This HUD proposal is a cruel attack on immigrant families already living in the interior of the United States.

The proposed rule also fails to take into account the unprecedented long delays and backlogs immigrants are facing at U.S. Citizenship and Immigration Services. The USCIS net backlog - which includes all immigration case applications, ranging from pending green cards to immigrant work visas - exceeded 2.3 million cases by last fall, according to the American Immigration Lawyers Association⁷. This means that a person without legal status could be waiting for years until they see an adjudication from USCIS. In New York City, it is taking anywhere from 21 months to 36 months to process an I-485 adjustment of status application. On May 31, 2019, GAO, the Government Accountability Office launched an investigation into the

⁵ See Julia Ainsley and Jacob Soboroff, *Trump Administration Responsible For Even More Separated Children*, NBC News, (March 8, 2019) <https://www.nbcnews.com/news/us-news/trump-administration-responsible-even-more-separated-children-judge-rules-n981296>

⁶ See Caitlin Dickerson, *Hundreds of Migrant Children Are Moved Out of Overcrowded Border Station*, *N.Y. Times*, (June 24, 2019), <https://www.nytimes.com/2019/06/24/us/border-migrant-children-detention-soap.html>

⁷ See Abigail Hauslohner, *Democrats Ask Federal Watchdog to Examine Unprecedented Immigration Backlog*, WASH. POST, (May 10, 2019), https://www.washingtonpost.com/immigration/democrats-ask-federal-watchdog-to-examine-unprecedented-immigration-backlog/2019/05/10/bad98bfa-7368-11e9-9f06-5fc2ee80027a_story.html?utm_term=.ace0034cc849

backlogs at the request of House Democrats.⁸

The Proposed Regulation Will Increase Homelessness, Fail to Alleviate Public Housing Waiting Lists and Cost Taxpayers Millions of Dollars

These proposed rules will also serve to exacerbate the already severe homelessness crisis in New York City. In recent years, homelessness in New York City has reached the highest levels since the Great Depression of the 1930s. In April 2019, there were 61,782 homeless people, including 14,826 homeless families with 21,709 homeless children, sleeping each night in the New York City municipal shelter system. Families make up nearly three-quarters of the homeless shelter population. Over the course of City fiscal year 2018, 133,284 different homeless men, women, and children slept in the New York City municipal shelter system.⁹ This includes over 45,600 different homeless New York City children.¹⁰

Not only does homelessness take a tremendous toll on the families who are subjected to it but it also strains government coffers. In fiscal year 2017, it costs on average \$73,000 per year to provide emergency shelter to a family in New York City.¹¹ This cost is far greater than providing subsidized housing to a family. Beyond the cost of providing emergency shelter there are a host of negative externalities associated with homelessness, which include lower educational attainment economic advancement.

⁸ Congressional Hispanic Caucus: Press Release, *Following CHC Request GAO Agrees to Open Investigation into Record-Breaking Immigration Case Backlog*, May 31, 2019, available at: <https://congressionalhispaniccaucus-castro.house.gov/media-center/press-releases/following-chc-request-gao-agrees-to-open-investigation-into-record>

⁹ New York City Homelessness statistics provided by the Coalition for the homeless. https://www.coalitionforthehomeless.org/wp-content/uploads/2019/06/NYCHomelessnessFactSheet_4-2019_citations.pdf

¹⁰ NYC Independent Budget Office, "The Rising Number of Homeless Families in NYC, 2002-2012," New York, NY, 2014.

¹¹ <https://www.coalitionforthehomeless.org/state-of-the-homeless-2018/>

NYCHA, the nation's largest public housing system, currently suffers from severe budget short falls and is plagued by poor conditions; as a result a federal monitor has been put in place to oversee the agency. Not only will this proposed rule put further strain on New York City's already taxed shelter system but it will also increase the cost of administering the public housing provided by NYCHA. NYCHA households consisting of mixed immigration status families pay far more in shelter costs than families consisting of only eligible family members. This is because federal housing subsidies are pro-rated to exclude immigration ineligible members. The same is true for mixed status household throughout the country.

By HUD's own admission, if the rule is adopted, current mixed-eligibility families would be replaced by completely immigration eligible households, as a result the agency will be forced to provide higher per-family rental subsidies. As a result there will be an increased annual cost of \$193 to \$227 million nationally to house the same number of people. Unless there are commensurate budget increases, HUD will either have to divert already scarce funding from other programs or pull back on subsidizing existing housing units.

One of the stated reasons for proposing this rule is the flawed assertion that it will move immigration eligible families off public housing waiting lists, which currently stand at around 4.4 million nationwide. But because the per household cost will increase, it is unlikely that as many people will be moved off of the waiting list as those that are displaced by this policy change.

Lastly, the proposed rules will disproportionately impact the 1.9 million older adults who reside in federally subsidized housing. The loss of rental assistance poses a risk of serious harm to seniors if they live in mixed immigration status families. Seniors have fixed incomes, and due

to age and disability it is nearly impossible for many of them to shoulder greatly increased housing costs. Furthermore, older adults spend a higher percentage of their income on medical costs than the general population.¹² Greatly increased housing costs will force seniors to choose between paying their rent and medical care. For seniors who cannot afford private market rents or who fall behind on their rent payments, homelessness will become a very real risk. Once homeless, the risks to seniors increase. Often shelters are ill-equipped to meet the needs of seniors, increasing the likelihood they will be placed in a nursing home. The average cost of a nursing home in New York City has now grown to nearly \$150,000 per year.¹³ Not only will these seniors lose the ability to live with dignity in the community, but because Medicaid pays for these nursing home costs it represents an additional tax payer cost of these proposed regulations.

Thank you for considering these comments as HUD reviews the proposed rule.

Respectfully submitted,

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¹² <https://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-Adults.pdf>

¹³ https://www.health.ny.gov/facilities/nursing/estimated_average_rates.htm