



National Hispanic Leadership Agenda

MEMBER ORGANIZATIONS

July 9, 2019

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

RE: NHLA comments on proposed changes to the Section 214 of the Housing and Community Act of 1980, Docket No: FR-6124-P-01

Dear Madam or Sir:

The National Hispanic Leadership Agenda (NHLA) submits this comment in response to the proposed rule published by the Department of Housing and Urban Development (HUD) in the Federal Register on May 10, 2019.¹

NHLA is a coalition of 45 of the most prominent Latino civil rights organizations across the country. Collectively, NHLA leads the advocacy regarding the pressing civil rights and policy issues affecting the 59 million Latinos living in the United States. Among these priorities is protecting the Hispanic community’s right to housing, which will be severely threatened if the proposed rule that seeks to end the practice of prorated federal housing assistance is implemented.

Section 214 of the Housing and Community Development Act of 1980 provides housing assistance to U.S. citizens and certain categories of noncitizens (“eligible members”).² These categories of noncitizens include lawful permanent residents, VAWA self-petitioners, asylees and refugees, parolees, individuals granted withholding of removal or deportation, victims of trafficking, and certain other noncitizens.³ Under current regulations, eligible members must submit evidence of citizenship or eligible immigration status to access these housing assistance benefits.⁴ Households with both eligible and ineligible members receive prorated assistance depending on the number of eligible members in the household.

¹ See Housing and Community Development Act of 1980: Verification of Eligible Status, 83 Fed. Reg. 20589 (proposed May 10, 2019), available at <https://www.federalregister.gov/documents/2019/05/10/2019-09566/housing-and-community-development-act-of-1980-verification-of-eligible-status>.

² Housing and Community Development Act of 1980 § 214, 42 U.S.C. § 1436a (2018).

³ See Dep’t of Hous. and Urban Dev., *Housing and Community Development Act of 1980: Verification of Eligible Status Proposed Rule Regulatory Impact Analysis*, 5 (Apr. 15, 2019), <https://www.regulations.gov/contentStreamer?documentId=HUD-2019-0044-0002&contentType=pdf> (explaining that “in addition to U.S. citizens and U.S. nationals, eligibility for HUD assistance includes a number of categories of noncitizens. Categories of eligible noncitizens include: (1) individuals lawfully admitted for permanent residence under the Immigration and Nationality Act (INA); (2) individuals admitted as refugees or under 207 or those granted asylum under 208 of the INA; (3) those paroled into the United States under 212(d)(5) of the INA; and (4) those granted withholding of removal under 241(b)(3) of the INA”).

⁴ 42 U.S.C. § 1436a(d)(1)(A); 42 U.S.C. § 1436a(d)(2)(A).

- Alianza Americas
- American G.I. Forum
- ASPIRA Association
- Avance Inc.
- Casa de Esperanza: National Latin@ Network
- Congressional Hispanic Caucus Institute
- Farmworker Justice
- Green Latinos
- Hispanic Association of Colleges & Universities
- Hispanic Federation
- Hispanic National Bar Association
- Hispanics in Philanthropy
- Inter-University Program for Latino Research
- Labor Council for Latin American Advancement
- LatinoJustice PRLDEF
- League of United Latin American Citizens
- MANA, A National Latina Organization
- Mexican American Legal Defense and Educational Fund
- Mi Familia Vota
- NALEO Education Fund
- National Association of Hispanic Federal Executives
- National Association of Hispanic Publications
- National Association of Latino Arts and Culture
- National Association of Latino Independent Producers
- National Conference of Puerto Rican Women, Inc.
- National Day Laborer Organizing Network
- National Hispana Leadership Institute
- National Hispanic Caucus of State Legislators
- National Hispanic Council on Aging
- National Hispanic Environmental Council
- National Hispanic Foundation for the Arts
- National Hispanic Media Coalition
- National Hispanic Medical Association
- National Institute for Latino Policy
- National Latina Institute for Reproductive Health
- National Latina/o Psychological Association
- Presente.org
- SER Jobs for Progress National
- Southwest Voter Registration Education Project
- U.S.- Mexico Foundation
- UnidosUS
- United States Hispanic Chamber of Commerce
- United States Hispanic Leadership Institute
- United States-Mexico Chamber of Commerce
- Voto Latino

Under the proposed rule, every member of a household seeking housing assistance would be required to undergo immigration status verification to establish eligibility, even if that individual is not seeking housing assistance.⁵ As a result, households with an ineligible member, or members, would be prohibited from receiving any housing assistance provided under Section 214, which includes Section 8 housing assistance, public housing, rent supplement, Section 235 homeownership housing, Section 236 housing, Section 23 leased housing assistance, and Housing Development Grants. The proposed rule also would bar individuals with ineligible status from serving as leaseholders.⁶ Section 214 explicitly permits prorated housing assistance when a household includes members of mixed immigration status.⁷ HUD’s current practice already restricts housing assistance funds available to eligible members only and prohibits ineligible members from accessing them. The proposed rule would do little to redirect housing assistance to “eligible households,” given that housing assistance is already restricted to do so. Instead, the proposed rule will lead to increased housing insecurity by displacing thousands of families from their homes and by decreasing public- and assisted-housing coverage, both of which will add to the housing crisis currently facing our nation.

As of December of 2017, 25,045 mixed-status families – those with eligible members and ineligible members – were living in public and assisted housing.⁸ The majority of mixed-status families in the United States are Latino. While ineligible members are permitted to live in public- and assisted-housing, only eligible members are able to access government housing assistance, which is prorated based on the number of eligible members in a household. Mixed-status families thus only receive a portion of the assistance that households with only eligible members receive. By implementing these proposed changes, HUD would put these families at risk of housing insecurity, which can lead to long-term homelessness, negative public and mental health effects, and substantial societal and community costs to address increased housing instability. The proposed rule will have a disproportionate effect on the Latino community, and exacerbate housing insecurity in our communities.

According to the Center on Budget and Policy Priorities, typical families in HUD-assisted housing live under the poverty line and would not be able to pay to afford rent without HUD assistance.⁹ If the proposed rule is adopted, many of the 25,045 mixed-status families that will be evicted from their homes would be unable to secure stable housing thereafter.

Additionally, HUD’s proposed rule would negatively affect over 55,000 children who are citizens or noncitizens eligible for housing assistance.¹⁰ HUD reported that 71% of people living in mixed-status families are eligible for housing assistance, of which 73% are children.¹¹ The proposed changes would bar mixed-status families from accessing subsidized-housing and effectively displace the thousands of eligible children living in them. In cases where ineligible parents are forced to leave their households

⁵ Dep’t of Hous. and Urban Dev., *supra* note 3, at 1.

⁶ *Id.*

⁷ See 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, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.”).

⁸ Dep’t of Hous. and Urban Dev., *supra* note 3, at 8.

⁹ Alicia Mazzara & Barbara Sard, *Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance*, CTR. ON BUDGET & POLICY PRIORITIES, 5 (Feb. 5, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/2-5-18hous-chartbook.pdf>, (reporting that “Fifty-six percent of working HUD households have earnings below the federal poverty line, which was \$20,160 for a family of three in 2016. Households with higher earnings remain eligible for rental assistance if their incomes are insufficient to pay market rents in the area.”).

¹⁰ Dep’t of Hous. and Urban Dev., *supra* note 3, at 6.

¹¹ *Id.*

to protect their families' eligibility for subsidized housing, children would be forced to live in single-parent-households and face the challenges associated with single-parenthood and increased family instability.¹² The proposed rule raises serious concerns regarding its constitutionality and the right to familial integrity for eligible recipients of housing assistance.¹³ As HUD's own analysis concedes, children living in single-parent households, on average, have lower levels of cognitive, behavioral, physical, and mental health and social mobility than those living in two-parent households.¹⁴

Changes to the implementation of Section 214 will also lead to a reduction in the number of units available for public and assisted housing. By replacing all mixed-status families with non-mixed-status families, HUD is expected to incur a budgetary increase as high as \$227 million.¹⁵ Given that federal budget allocations for housing are not expected to increase, these extra expenses would likely reduce the number and quality of units available to eligible members.¹⁶

Affordable housing is a growing problem for many Americans, especially for those living at or below the poverty line. Last year, only 35 affordable rental homes were available for every 100 renters living below the poverty line.¹⁷ These individuals also accounted for nearly 73% of all severely cost-burdened renter households in the United States, spending more than half of their income on rent and utilities.¹⁸ HUD can mitigate this growing crisis by withdrawing the proposed rule and continuing to ensure that all eligible members can remain in their homes, as well as increasing, rather than decreasing, the number of units available for public and assisted housing. NHLA strongly opposes the proposed rule and urges HUD to withdraw it in its entirety.

Thank you for this opportunity to comment. For additional information, please do not hesitate to contact Andrea Senteno, of MALDEF, at asenteno@maldef.org or Laura Esquivel, of Hispanic Federation, at lesquivel@hispanicfederation.org.

Best regards,



Thomas A. Saenz
MALDEF, President and General Counsel
NHLA Immigration Committee Co-Chair
Chair



Jose Calderón
Hispanic Federation, President
NHLA Immigration Committee Co-

¹² See *id.* at 8 (explaining that households receiving assistance may react to the proposed rule by having the “ineligible adults [] leave the housing unit to preserve housing assistance for the eligible members.”).

¹³ See *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) (stating that “when the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.”).

¹⁴ Dep’t of Hous. and Urban Dev., *supra* note 3, at 9 n.8.

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ THE NAT’L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 2 (2018), available at https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf.

¹⁸ *Id.*