

July 8, 2019

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

**Re: Comments on RIN 2501-AD89: Housing and Community Development of 1980:
Verification of Eligible Status**

Dear Sir or Madam:

Thank you for the opportunity to submit this comment on the U.S. Department of Housing and Urban Development's (HUD) proposed rule making changes to the regulations implementing Section 214 of the Housing and Community Development Act of 1980, as amended (the Act). If promulgated, this rule could have a devastating impact on U.S. citizens and legal immigrants, their families, and tens of thousands of American children. UnidosUS concurs with HUD's official economic analysis accompanying the proposed rule that questions its utility and effectiveness, and respectfully urges HUD to rescind this proposal.

Since 1968, UnidosUS—formerly known as the National Council of La Raza—has been committed to building a stronger America by creating opportunities for Latinos.* In this rich 50-year history, UnidosUS has remained a trusted, nonpartisan voice for Latinos, serving the community through research, policy analysis, and state and national advocacy. We also work closely with a network of nearly 300 community-based organizations in 37 states, the District of Columbia, and Puerto Rico, to serve our community in a variety of areas including housing, workforce development, health care, immigration, and education. Many of our community partners provide direct services to immigrant and non-immigrant groups in the United States, serving over 9 million people annually.

UnidosUS is at the vanguard of promoting homeownership in the Latino community through the UnidosUS Wealth and Housing Alliance (UWHA). Today, the UWHA is the nation's largest network of community-based organizations working to empower Latino wealth-building through homeownership. The UWHA is a HUD-approved housing counseling intermediary that trains hundreds of housing counselors to offer direct, culturally competent housing and financial counseling services. Established in 1997, the UWHA includes 50 independent community-based organizations that support more than 60,000 families a year.

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Since its founding, UnidosUS has advocated for the economic, social, and political well-being of Latinos. We have advocated to make affordable housing more accessible to low income people in myriad ways: we have supported increased funding for rental assistance programs, provided Congressional testimony in support of measures to strengthen the Community Reinvestment Act and the Home Ownership and Equity Protection Act (HOEPA); we have fought for strong fair housing and lending laws, a fair and equitable credit scoring system, and increasing access to financial services for low-income families. UnidosUS supports commonsense immigration reform that recognizes the economic and societal contributions of immigrants, including their role in revitalizing and stabilizing struggling neighborhoods and communities. Today, Latinos represent approximately one in six Americans, and one of the fastest-growing segments of the U.S. population.

In this context, we believe the proposed rule represents the classic definition of a bankrupt policy: it would harm many of those it purports to help, do nothing to advance effective enforcement of our immigration laws, and would cost the government far more to implement than it would save. Current regulations already provide subsidies on a pro rata basis consistent with the number of eligible individuals in a household; these policies prevent even a single penny of federal assistance from conceivably benefitting ineligible persons and further reaffirm the case that the proposed rule is unnecessary, counterproductive, and dangerous.

As discussed below in more detail, UnidosUS has serious concerns about the proposed rule's disproportionate impact on Latino families; indeed, by some estimates 85% of the families that could be impacted by the proposed rule are Latino.¹ We therefore strongly oppose the proposed HUD rule for its anticipated long-lasting, negative impacts on housing, legal immigration, public health, and our nation's economy. We urge you to withdraw your consideration of this proposed rule.

I. Background: Why the Latino Community has a Stake in the Proposed Rule.

The Latino community has a significant stake in the promulgation of this rule. Latino affordable housing needs remain high, and while many low-income Latinos are eligible for housing assistance programs, their participation in these programs remains low. Systemic barriers help to explain why this remains the case, despite an urgent need for housing assistance. This proposed rule would only deepen the existing disparity.

- **Latinos' Affordable Housing Needs Remain High.** According to the U.S. Census Bureau, more than half (55%) of Latino renting households were "cost-burdened" in 2017, meaning that they spent more than one third of their household income on rent.² Among these cost-burdened households, 28% of Latino renters spent more than half of household income on rent.³ Households that spend 50% or more of household income on rent without receiving housing assistance are considered to have "worst-case housing needs."⁴ According to a 2017 HUD report, Latinos are more likely to experience "worst case needs" than other low-income renters. Between 2005 and 2015, the number of Latino renting households with worst-case housing needs grew by 80%, a larger increase than for African-American and white households combined.⁵

- Historically, Latino Households Participate in Federal Housing Programs at Low Rates. Research shows that low-income Latino households have long faced structural barriers to affordable housing, including access to federally assisted homes.⁶ According to an UnidosUS report in 1997, low income Latinos in high-cost housing markets faced a constrained supply of affordable homes, received insufficient information about federal housing programs, and when they did apply, faced long waiting lists with few options to track their status.⁷ In 1996, 23% of poor households were Latino; yet Latinos constituted only between 10 to 13% of participants in major assisted housing programs.⁸ Latinos continue to be underrepresented in federally assisted housing programs, such as the Housing Choice Voucher program. Between 2007 and 2017, the share of Latino Housing Choice Vouchers recipients remained the same at 17%.⁹ In 2018, this grew by one percentage point; 18% of Housing Choice Voucher recipients were Latino, compared with 48% who were Black Non-Hispanic and 31% who were White Non-Hispanic.¹⁰ While a common narrative contends that Latinos “do not need or want public housing or housing subsidies,”¹¹ it ignores the fact that many low-income Latinos remain locked out of opportunities for more stable housing and the greater economic security it provides.

- Latino Mixed Status Households are Particularly Sensitive to this Proposed Rule. In 2017, approximately 16 million people in America lived in mixed-status households.¹² Though not all, a significant share of mixed status households are Latino. Mixed status families tend to experience greater poverty and economic hardship compared to those who are U.S. citizens, due in large part to limited legal rights, access to services, and entitlement to benefits.¹³ According to UnidosUS analysis, Latino households are at greater risk of economic and social adversity than their peers.¹⁴ Sensitivity to actual and perceived concerns about immigration enforcement also help to explain this adversity. The dynamics impacting mixed status families arguably have the largest impact on American children. Among Latino children, who account for a quarter of all U.S. citizen children,¹⁵ the majority (52%) have at least one immigrant parent.¹⁶ As discussed in Section III, Latino children in mixed status households experience and internalize the hardships impacting their parents in detrimental ways.

II. The Proposed Rule Contravenes the Very Principles it Purports to Promote

The federal government has spent decades investing in federal housing assistance programs because safe and affordable housing is critical to pursuing economic and educational opportunities. The proposed rule would undermine these public investments by destabilizing tens of thousands of American households. Under the current proposal, impacted families would face the difficult choice of separating from a caregiving or breadwinning family member to retain housing assistance, or face eviction as a family unit.

As written in HUD’s notice, the proposed rule purports to adhere to Executive Order 13828, “Reducing Poverty in America by Promoting Opportunity and Economic Mobility.”¹⁷ The EO is rooted in the ‘Economic Principles of Economic Mobility,’ including: (1) improving employment outcomes and economic independence; (2) promoting strong social networks; (3) addressing the challenges of vulnerable populations, including those experiencing homelessness; and (4) promoting the effective use of government resources. The proposed rule is counterproductive to these principles and could even

increase poverty for tens of thousands of Americans, the majority of whom are Latino. Specifically, the proposed rule would:

- Reduce economic independence, increase poverty, and worsen health and educational outcomes for children. According to HUD’s economic analysis, mixed status families at-risk under the rule earn an average annual household income of \$18,000 for a family of 4.3 persons; the analysis also projects that mixed status families in California, Texas, and New York will be disproportionately impacted. The lowest 2019 HUD Fair Market Rate (FMR) for a two-bedroom dwelling in these expensive private markets – \$770 per month in California and \$700 per month in Texas and New York – would leave families severely cost-burdened.¹⁸ Without the needed assistance, impacted families will have to devote most of their income to housing and will have fewer prospects of achieving economic independence.

Not included in the analysis are the ways HUD programs like Section 8 Housing Choice Vouchers help families afford housing in neighborhoods with greater educational and economic opportunities, and in turn, promote short and long-term self-sufficiency. The benefits of housing assistance have been shown to be most pronounced for individuals who receive assistance as young children.¹⁹ In 2017, federal rental assistance lifted approximately 801,174 Latinos out of poverty, including approximately 283,303 Latino children.²⁰ The proposed rule fails to account for the instability children are likely to experience as a result of losing housing assistance, or its associated economic costs, which include poor educational and employment outcomes and high risk of physical and mental health problems.²¹

- Weaken efforts to promote strong social networks. Research suggests that housing assistance benefits provide continuity of community relationships to participants, which in turn strengthens social networks.²² As HUD’s own economic analysis explains, mixed status families will be forced to choose between family separation and losing their home and social networks.
- Fail to address the challenges of vulnerable populations, including those at risk of experiencing homelessness. A 2015 study examined the outcomes of families who transitioned from housing assistance for positive reasons, such as an increased income, and those who lost assistance for negative reasons, such as eviction. The study found households who lost housing assistance for negative reasons were significantly more likely than the general population to experience homelessness after their benefits ended.²³ Homelessness is costly to society and has long-term negative consequences for families. According to the HUD-funded “Family Options” study, spending as little as one week in a shelter can have negative repercussions for families years later.²⁴ The study also found that access to deep *permanent* subsidies is the best remediation for family homelessness. If implemented, this rule could trigger a future crisis of HUD’s own making.
- Fail to promote the effective use of government resources. HUD was established in 1965 through the Housing and Urban Development Act to “achieve the best administration of principal programs of the federal government which provide assistance for housing and for the development of the nation’s communities.”²⁵ The proposed rule violates HUD’s mission by proposing actions that would *knowingly* increase costs and harm families, including increasing homelessness. HUD’s own analysis of the proposed rule acknowledges that “[t]here are less

costly alternatives that would achieve a similar objective to this proposed rule ... Such an alternative would likely limit the adverse impact of the transition on eligible children.”²⁶

III. American Children Will Pay the Steepest Price if the Rule is Promulgated.

While this rule appears to be designed to target immigrants in mixed status households, UnidosUS believes that if promulgated, the rule will produce negative secondary effects which will be felt in Latino communities across the country. The proposed rule fails to account for the economic, societal, and personal impacts to American children, the impact to immediate familial and other support networks, and the “chilling effect” on entire communities. Each of these concerns is discussed below.

a. The Proposed Rule Stands to Generate Lasting Direct Impacts on American Children.

HUD estimates this proposed rule could displace more than 55,000 children who are legal U.S. residents or citizens from their homes; this displacement and housing instability could profoundly impact young Latinos for life. Families experiencing housing insecurity, or those forced to leave their homes due to changes in financial circumstances, often move multiple times before finding an affordable alternative. Those unable to find suitable alternatives run the risk of becoming homeless or resort to living in shelters.²⁷ Research shows that children who are uprooted from their homes or experience frequent housing disruptions demonstrate short and long-term behavioral and developmental issues.²⁸ Exposure to inadequate housing conditions, such as poor-quality structures, overcrowding, and frequent moves, are strongly correlated to harmful health and psychological impacts on children over time.²⁹ For children in mixed status households, living conditions are even more likely to be overcrowded spaces where families face significant financial strain.³⁰

One of the most significant health challenges facing children in mixed immigration status families is “toxic stress”.³¹ In one study by Harvard’s Center on the Developing Child, researchers defined toxic stress as “strong, frequent, and/or prolonged adversity—such as physical or emotional abuse, chronic neglect, caregiver substance abuse or mental illness, exposure to violence, and/or the accumulated burdens of family economic hardship—without adequate adult support.”³² Just as a child living with a physically or emotionally abusive parent might experience periods of toxic stress, researchers found that children living in constant fear of a parent being subject to encounters with immigration enforcement can also experience it. As described in Section IV, there is a clear nexus between this proposed rule and immigration enforcement.

b. The Proposed Rule Would Produce an Insidious Multiplier Effect that Spills onto Immediate Latino Familial and Social Networks.

The proposed rule will disproportionately affect Latino families, families of color, children, and the communities in which they live. According to a recent analysis of HUD’s administrative data by the Center on Budget and Policy Priorities, Latinos comprise 85% of people in “mixed status” families that could lose assistance (**See Table 1**). This will further exacerbate the disparities faced by Latino children, who are more likely to be uninsured, to live in poverty, and to experience food insecurity than their white peers.³³

Rule’s harmful effects fall disproportionately on Hispanic/Latinx & Black people

People in “mixed-status” families that could lose assistance	U.S. citizens subject to proposed rule’s new documentation requirements
85% Hispanic/Latinx	48% Black
7% Black	27% White
5% White	19% Hispanic/Latinx
2% Asian or Pacific Islander	3% Asian or Pacific Islander

Source: CBPP analysis of HUD administrative data.

Table 1. Percentage of individuals affected by the proposed rule, by Race and Ethnicity³⁴

If implemented, the proposed rule could exacerbate the affordable housing crisis that low-income Latino families already face and mask the very nature and circumstances of homelessness among Latinos. Researchers have found that Latinos are more likely than non-Hispanics to become “marginally housed” rather than “traditionally homeless” – that is, they are more likely than other groups to move in with friends or family to avoid staying in shelters or outside.³⁵ Studies have found strong links between household overcrowding and direct negative effects on childhood development and resident health.^{36, 37} Because overcrowding can be experienced by the guest, host, or both, the proposed rule could have a negative multiplier effect throughout low-income Latino communities. HUD’s estimate of 25,405 families significantly understates the actual number of families and children that would be affected by the proposed rule and fails to quantify these secondary economic and societal costs.

c. The Chilling Effect the Proposed Rule Generates is Real and Measurable.

UnidosUS is also concerned that if promulgated, the proposed rule would have a “chilling effect,” i.e. that numerous eligible Latinos would withdraw from, or forego, necessary public assistance. The complexity of the proposed rule, the fear of immigration consequences, and growing awareness of other, similar regulatory measures (e.g. the DHS and DOJ proposed rules on “Inadmissibility on Public Charge Grounds” and the DHS proposed rule on “Changes to Fee Waiver Eligibility Criteria”) could contribute to a wide-ranging “chilling effect” that would harm U.S. citizens, lawful permanent residents, and other eligible immigrants.

The Trump Administration’s 2018 proposed “public charge” rule serves as a cautionary tale; publishing the rule has already evoked a measurable “chilling effect” on low-income immigrant communities and discouraged *eligible* individuals from applying for and accessing benefits.³⁸ In a recent survey, Latino immigrants and low-income families with children were twice as likely than their peers to report avoiding (dropping out or choosing not to enroll) in public benefits out of fear of jeopardizing their immigration status, even when some or all of the family members were naturalized.³⁹ These self-reported chilling effects are validated by recent research from New York City, which detected a large drop in Supplemental Nutrition Assistance Program (SNAP) enrollment since the start of the Trump Administration that widened after the announcement of the public charge rule. Since 2018, noncitizen

enrollment in SNAP has dropped nearly 5 percentage points in NYC – noncitizen Hispanic enrollment has dropped roughly 14 percentage points.⁴⁰

HUD’s proposed rule is similar in spirit to the proposed “public charge” rule. In fact, both proposed rules cite the March 2017 Presidential Memorandum as inspiration.⁴¹ HUD is aware that this rule will intimidate eligible families from accessing housing assistance. According to HUD’s analysis, “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed households, *whether that fear is justified*” (emphasis added).

When federal policies affirmatively discriminate or are perceived to be discriminatory by certain communities, enrollment in public assistance programs decline. This has been especially true for Latinos, who have long been locked out of federally assisted housing programs.⁴² State and local governments go to great lengths to assure applicants with close connections to our nation’s immigration system that their information will not be shared with immigration authorities.⁴³ For example, U.S. Department of Agriculture (USDA) community materials urge it is “important for noncitizens to know they will not be deported, denied entry to the country, or denied permanent status because they apply for or receive SNAP benefits.”⁴⁴ Even the public charge guidelines presently in force were designed to be inclusive and “reduce the negative public health consequences generated by [then] existing confusion [following the enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PWRORA)] around the meaning of public charge,” and ensure eligible applicants are not deterred from accessing non-cash public assistance programs.⁴⁵

In 2016, former HUD Secretary Julian Castro issued guidance noting that “because individuals might come from families with mixed immigration status, there may be some family members who are eligible for all benefits and others who are not eligible or who can receive only a more limited subset of those benefits. Therefore, benefits providers must ensure that they do not engage in practices that deter eligible family members from accessing benefits based on their national origin. Moreover, under Title VI of the Civil Rights Act of 1964, protection against national origin discrimination includes ensuring that recipients of federal financial assistance take reasonable steps to provide meaningful access to services for persons with limited English proficiency.”⁴⁶

The proposed rule will only engender fear and confusion, and could result in American citizens, including many children, from accessing resources for which they are eligible. UnidosUS believes that when the direct and indirect chilling effects of the proposed rule are considered in their totality, the disproportionate harm will be borne by Latinos.

IV. Verification of Immigration Status and Information Sharing.

UnidosUS has significant concerns with the proposed immigration status verification requirements. First, we believe that the use of the Systematic Alien Verification for Entitlements Program (SAVE) is not the silver bullet the Administration thinks it is for establishing lawful presence in the country. Second, balancing the need to provide people with public assistance and ensuring the integrity of the benefits system is already captured by the pro rata benefit structure. Third, the verification requirements would disturb and undercut years of longstanding and well-founded government policy and practices around housing assistance eligibility.

a. The SAVE Program is not a Panacea.

The SAVE Program has significant limitations as a proxy for immigration status. The SAVE Program serves to verify immigration documents provided by a noncitizen are accurate during a “snapshot” in time. It does not use terms such as “lawfully present” or “unlawfully present,” in part due to the complexity and fluidity of how immigration cases are adjudicated. For example, an individual who is not lawfully present today could acquire legal status at some point in the future, or the U.S. Department of Homeland Security (DHS), as a matter of discretion, may authorize a noncitizen to remain in the country. These decisions are not always captured by a “snapshot” in time, as they can occur at any time before, during, or after formal administrative or judicial proceedings.⁴⁷

Moreover, the SAVE Program is only designed to review the veracity of immigration *documents*; its screening value is limited in cases where an individual has no prior contact with immigration authorities, as may be the case for many noncitizens who could be impacted by the proposed rule. DHS highlighted SAVE’s limitations in an analogous Florida voter rolls case in 2013 when it noted, “there are a number of reasons why the SAVE program may not be able to verify [] citizenship, e.g., the SAVE program can only verify naturalized or derived citizens, to the extent that a derived citizen received an official determination on U.S. citizenship by USCIS. The inability of the SAVE program to verify your citizenship does not necessarily mean that you are not a citizen of the United States and are ineligible to vote.”⁴⁸

Public Housing Authorities (PHAs) across the U.S. would be burdened with collecting additional documents to establish citizenship for all members of a beneficiary’s household, as well as establishing new related administrative processes and procedures. USCIS carefully notes that while SAVE may verify immigration status, or naturalized or derived citizenship of certain individuals, it does not make any determinations or recommendations on whether an applicant qualifies for any specific benefit.⁴⁹ Would PHAs be required to develop an alternative method for determining status? Should PHAs make presumptive but highly unqualified judgements about the immigration status of an individual? Or, should PHAs do nothing and risk retaliation from the federal government for not complying with the rule?

Finally, UnidosUS is concerned about the privacy and data disclosure implications of using the SAVE program. Under applicable regulations, DHS exempted SAVE’s Compliance Tracking and Monitoring System (CTMS) from many provisions of the Privacy Act on the basis that protections would interfere with law enforcement.⁵⁰ We are concerned that individuals whose personal information has been wrongfully disclosed will not be notified or have an opportunity to correct CTMS records.

b. The Proposed Rule’s New Verification Requirements are Cumbersome and Unnecessary.

This proposed rule’s new requirements are superfluous to existing statutory and regulatory authorities as they pertain to mixed status families. Misrepresentation of eligibility by a noncitizen is already punishable under penalty of perjury.⁵¹ Section 214(b)&(c) of the Act delineate administering public assistance on a pro rata basis consistent with the number of *eligible* family members in a mixed status household. HUD should uphold the “do not contend” provision for ineligible noncitizens; it is the most efficient way for PHAs to balance the interests of serving families in need and protecting the integrity of

the benefits system. In doing so, HUD would avoid imposing new and cumbersome administrative burdens on PHAs, especially in high volume urban centers in states like Texas, California, and New York.

UnidosUS has significant reservations about HUD's assertion that SAVE eliminates the justification of the "pro rata" requirement. In its analysis for the proposed rule, HUD asserts that the "pro rata" statutory text and implementing regulations was intended to "[strike] a balance with timely permitting assistance but providing an incentive to cooperate in timely completion," and further contends that because "verification through SAVE is almost instantaneous in most instances," prorated assistance is no longer appropriate beyond a short duration. As noted above, SAVE has its limitations, especially when an individual does not have U.S. government-issued documents, has never had an encounter with immigration authorities, or provides identification documents issued by a foreign government. Even if the SAVE system was both perfect and instantaneous, the rule would still not be justifiable on equity grounds, since U.S. citizen and other lawfully present children and family members would be denied assistance to which they are statutorily eligible.

Lastly, PHAs should not be unduly burdened by conducting formal evictions. HUD's analysis of the rule estimates as many as 25 percent of targeted households may need to be formally evicted under this rule, a role it devolves to PHAs. This would come at an exorbitant cost (between \$3.3 and \$4.4 million) and immense administrative strain to agencies which – according to 2015 HUD research – are chronically and seriously underfunded.⁵²

c. New Verification Requirements Contravene Significant Public Policy Objectives.

The verification requirements in the proposed rule risk breeding fear and generating a perception of discrimination, each of which has been shown to decrease eligible participation in public assistance programs. In addition to the chilling impact discussed above, the proposed rule would revise 24 CFR 5.508 to authorize the release of immigration status to the U.S. Department of Homeland Security (DHS), as opposed to the U.S. Citizenship and Immigration Service (USCIS) which administers the SAVE program. DHS administers several databases including Automated Biometric Identification System (IDENT) which is used by U.S. Immigration and Customs Enforcement (ICE) to target individuals for arrest, detention, and removal. This revision would further the Administration's efforts to weaken existing privacy protections that limit information sharing between USCIS and DHS enforcement components.

In this way, the proposed rule undermines longstanding and significant public policy interests in promoting the health and well-being, economic opportunity, and self-sufficiency of low-income families. One of the primary community-based concerns of information sharing between government agencies is that the information will end up in databases like IDENT. In the 20 years following the enactment of PWRORA, government agencies have gone to great lengths to address these concerns, as noted in Section III. Despite many efforts to clarify citizenship documentation requirements over the years, one of the most damaging effects of rules and policies in similar contexts is declining enrollments by *eligible* individuals, including U.S. citizens.⁵³

Conclusion

UnidosUS strongly opposes HUD's proposed rule to change the regulations implementing Section 214 of the Housing and Community Development Act of 1980. We have significant concerns that, if promulgated, the rule would produce undue harm to the Latino community by needlessly generating housing insecurity, economic instability, and contributing to lower health and educational outcomes of thousands of American children. We urge HUD to abandon plans to issue this proposed rule and instead implement and enforce the current law. Should you have any questions regarding these comments, please contact Agatha So, Policy Analyst, at aso@unidosus.org.

Sincerely,

Eric Rodriguez
Vice President
UnidosUS

Endnotes

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