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## Opportunities denied: Analyzing HUD's proposed rule to disqualify mixed-immigration status families from federal housing

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### Executive Summary

- A proposed rule from the U.S. Department of Housing and Urban Development (HUD) would require all individual beneficiaries of several HUD programs to be of eligible immigration status.<sup>1</sup>
- H.R. 3024, sponsored by U.S. Representative Espaillat (NY-13), would ensure that mixed-immigration status families could continue to be eligible for public housing assistance.
- Eliminating immigration status as an eligibility criterion for public housing assistance would help close the opportunity gap between newly arrived immigrant families and long-term residents.

### What is the problem?

On May 10, 2019, the U.S. Department of Housing and Urban Development (HUD) announced a proposed rule to amend the regulations that implement Section 214 of the Housing and Community Development Act of 1980 to require all individual beneficiaries of public housing assistance to be of eligible immigration status.<sup>2</sup> Specifically,

the rule stated: "A household would not receive housing assistance unless every member residing in the assisted unit, including those over the age of 62, is of eligible immigration status."<sup>3</sup> This is a critical point in the regulation, since most mixed-immigration status families have ineligible parents as the head of household with eligible children receiving the assistance.<sup>4</sup> If this proposal were adopted, then an estimated 25,000 families of mixed-immigration status including over 55,000 children who are U.S. citizens or green card holders, could be evicted.<sup>5</sup>

HUD's stated reasoning for this proposed rule is to ensure that its "limited financial resources be used to aid families lawfully present in the United States"<sup>6</sup> as opposed to people that are in the U.S. without authorization. This sort of messaging indicates a fundamental misunderstanding of undocumented people and their relationship to the program. According to UnidosUS, under the proposed rule, "ineligible" does not equal "undocumented": immigrants can have legal status and still be ineligible for housing assistance.<sup>7</sup> Moreover, as Section

214 currently operates, assistance for mixed-immigration status families is already prorated so that undocumented individuals do not receive financial assistance from HUD.<sup>8</sup> For example, in a family of four, both parents would customarily receive a housing subsidy for the family. If one parent is undocumented, however, the family would receive a subsidy for the documented parent only.<sup>9</sup> To illustrate the impact of this rule, over 5,000 households in Arizona alone could lose their assistance or be forced to separate in order for some family members to remain housed.<sup>10</sup> HUD's own assessment predicts that barring immigrants and mixed-status households from federal housing subsidies would actually increase costs to the agency. In the Regulatory Impact Analysis issued by HUD, the agency acknowledged that the proposed rule could create more than \$200 million a year in new costs and hurt public housing by reducing the "maintenance of the units and possibly deterioration of the units that could lead to vacancy."<sup>11</sup>

After HUD Secretary Ben Carson testified before the House Financial Services Committee on May 21, 2019, the National Low Income

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Housing Coalition and the National Housing Law Project released a joint statement warning the public that shifting the blame on struggling families will not fix the long waitlist for housing assistance. Instead, “the real issue is the lack of funding to ensure that every family who is eligible for HUD assistance has access to one of the most basic human rights – a safe, accessible, and affordable place to call home.”<sup>11</sup> In an open letter to HUD, the Tri-Caucus—which includes the Congressional Hispanic Caucus, Congressional Black Caucus, and Congressional Asian-Pacific American Caucus—clarified that under the current program, “no federal aid is dedicated to the household member who is not a U.S. citizen.<sup>12</sup> Therefore, eliminating mixed-immigration status families from federal housing is not rooted in a decision to be more fiscally responsible, but rather to disrupt the lives of vulnerable families residing in the U.S.

### **Policy Options**

In response to HUD's proposed rule, U.S. Representative Adriano Espaillat (NY-13), introduced the Families Under One Roof Act of 2019 (H.R. 3024). With this bill, Espaillat, who is the first formerly undocumented immigrant in Congress,<sup>13</sup> seeks to revise the language in Section 214 to replace “head of household or spouse” with “any member” so that minor children could also be included when determining whether a family is eligible to receive housing assistance.<sup>14</sup>

One strength of H.R. 3024 is that it would authorize all mixed-immigration status families currently receiving federal housing assistance to keep their subsidies and remain housed. As stated by Rep. Espaillat, “to penalize families and potentially make children homeless—as well as adults—is wrong. This is an effort to protect them from eviction.”<sup>15</sup> A proposal to keep families housed should align with the motives of any U.S. public official, let alone the Secretary of Housing and Urban Development. Established in 1965, “HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all.”<sup>16</sup>

In order to uphold this promise, another policy option could be updating Section 214 of the Housing and Community Development Act of 1980 so that immigration status is not a factor in determining eligibility for public housing assistance. Doing so would present advantages for U.S. citizens and immigrants alike. One of the misconceptions around the proposed rule is that it only affects undocumented people. In actuality, it would affect over nine million U.S. citizens and 120,000 elderly immigrants currently receiving assistance.<sup>17</sup> Removing immigration status as a factor would immediately eliminate any concern about U.S. citizens being separated from their immediate family members who might be deemed ineligible by the proposed rule.

Additionally, newly arrived immigrants face unique obstacles early

on in comparison to other foreign born residents who have been in the U.S. for a longer period of time.<sup>18</sup> For example, immigrants who arrived to the U.S. within the last five years have a 7.1% unemployment rate, compared to a 3.9% unemployment rate amongst foreign born individuals who have lived in the country for more than ten years.<sup>19</sup> By removing immigration status as a criterion to receive public housing assistance, newly arrived immigrants would be able to focus more on the economic challenges that come with transitioning to life in a new country and gradually become self-sufficient. The overall goal of becoming self-sufficient is a challenge that HUD already understands well. According to a HUD publication, “recipients of HUD housing assistance have varied work situations and work readiness, so different levels of services are required to achieve self-sufficiency.”<sup>20</sup> HUD recognizes this because its purpose as a Department is to “utilize housing as a platform for improving quality of life.”<sup>21</sup> These two areas are inextricably connected and the decision to disqualify mixed-immigration status families from federal housing would only result in diminishing their quality of life in the U.S.

While this proposal to provide housing for all who meet financial requirements aligns well with HUD's mission to provide “homes for all,” it might not align with the Administration's posture towards immigrants.<sup>22</sup> It would also require increased funding for housing programs, while the

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Administration has been moving toward cuts.<sup>23</sup> Ultimately, HUD's Office of Policy Development and Research outlines why an investment as grand as this one—affordable housing for the most financially needy in the U.S. regardless of their immigration status—is worthwhile. In words of the Department, access to affordable and stable housing has the “capacity to help improve residents’ health, access to education, and employment prospects.”<sup>24</sup> Therefore, an investment in housing for the most vulnerable in the U.S. without concern for their immigration status provides a return that benefits the wellbeing, labor workforce, and overall economy of the country.

## **Conclusion/Policy Recommendations**

Although the public comment period ended on July 9, 2019, the future of this proposed rule remains uncertain. In order for HUD to uphold its mission statement, the Administration should work with Congressional leaders such as Rep. Espaillat and members of the Tri-Caucus to remove barriers for immigrant families to acquire safe, affordable housing. At minimum, this would mean withdrawing the proposed rule as it is now.

Understanding that stable housing is fundamental to economic success, HUD should strive to live up to its mission to provide “homes for all” and work with Congress to amend Section 214 of the Housing and Community

Development Act of 1980 to remove immigration status as a factor when seeking public housing assistance.

## **Endnotes**

<sup>1</sup> Eligible immigration status includes U.S. citizens, nationals, or certain categories of eligible noncitizens either applying to or residing in specific Section 214 covered programs. <https://www.hud.gov/sites/documents/74657GC6GUID.PDF>

<sup>2</sup> “Housing and Community Development Act of 1980: Verification of Eligible Status.” Proposed Rule, Federal Register, 10 May, 2019. <https://www.federalregister.gov/documents/2019/05/10/2019-09566/housing-and-community-development-act-of-1980-verification-of-eligible-status>

<sup>3</sup> Ibid.

<sup>4</sup> HUD, Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, Proposed Rule Docket No: FR-6124-P-01, 15 April 2019 <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>

<sup>5</sup> McCarty, Maggie and Jameson A. Carter. “HUD’s Proposal to End Assistance to Mixed Status Families.” Congressional Research Service, 2019. <https://fas.org/sgp/crs/misc/IN11121.pdf>

<sup>6</sup> “Housing and Community Development Act of 1980: Verification of Eligible Status.” Proposed Rule, Federal Register, 10 May, 2019. <https://www.federalregister.gov/documents/2019/05/10/2019-09566/housing-and-community-development-act-of-1980-verification-of-eligible-status>

<sup>7</sup> Comment now against HUD’s proposed rule that threatens to evict 55,000 children from their homes. UnidosUS, 25 June 2019. <https://blog.unidosus.org/2019/06/25/hud-public-comments-immigrant-families/>

<sup>8</sup> Comments in Response to Proposed Rulemaking – Housing and Community Development Act of 1980. National Housing Law Project, p. 7, 9 July 2019. [https://www.nhlp.org/wp-content/](https://www.nhlp.org/wp-content/uploads/National-Housing-Law-Project_Comments-in-Response-to-Proposed-Rulemaking_HCDA-of-1980-Verification.pdf)

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<sup>9</sup> Sasu, Milicent. “HUD’s Mixed-Status Rule is the Latest Attack on the Immigrant Community.” National Immigration Law Center, 8 July 2019. <https://www.nilc.org/2019/07/08/huds-mixed-status-rule-is-the-latest-attack-on-the-immigrant-community/>

<sup>10</sup> Families Receiving Assistance from Public Housing, Section 8 Project-Based Rental Assistance, Section 8 Moderate Rehabilitation, or Housing Choice Voucher Program. Center on Budget and Policy Priorities, 2017. [https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4\\_c0832bfe7d804ec499a2fdcc8fb9de3a.pdf](https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4_c0832bfe7d804ec499a2fdcc8fb9de3a.pdf)

<sup>11</sup> HUD, Regulatory Impact Analysis, Amendments to Further Implement Provisions of the Housing and Community Development Act of 1980, Proposed Rule Docket No: FR-6124-P-01, 15 April 2019

<sup>12</sup> “Setting the Record Straight: HUD’s Harmful Proposal to Evict Mixed-Status Immigrant Families.” National Low Income Housing Coalition and National Housing Law Project, 17 June 2019. [https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4\\_8e8ed9ebf63749118ed69ddcf26fde1e.pdf](https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4_8e8ed9ebf63749118ed69ddcf26fde1e.pdf) <https://nlihc.org/sites/default/files/2019-05/Noncitizen-RIA-Final-April-15-2019.pdf>

<sup>13</sup> Tri-Caucus Members Oppose HUD Secretary Carson’s Effort to Evict Immigrant and Mixed-Status Families. Congressional Hispanic Caucus, 18 June 2019 <https://chc.house.gov/sites/congressionalhispaniccaucus.house.gov/files/6.18.19%20HUD%20letter.pdf>

<sup>14</sup> Latimer, Brian. “Adriano Espaillat Elected First Dominican-American to US Congress.” NBC News, 8 November 2016. <https://www.nbcnews.com/news/latino/adriano-espaillat-elected-first-dominican-american-us-congress-n680806>

<sup>15</sup> Families Under One Roof Act of 2019, H.R. 3024, 116th Cong. (2019) <https://www.congress.gov/116/bills/hr3024/BILLS-116hr3024ih.pdf>

<sup>16</sup> Montoya-Galvez, Camilo. "Democrats look to block Trump housing proposal that could displace thousand of immigrant families." CBS News, 29 May 2019. <https://www.cbsnews.com/news/democrats-look-to-block-trump-housing-proposal-that-could-displace-thousands-of-immigrant-families/>

<sup>17</sup> U.S. Department of Housing and Urban Development Mission. <https://www.hud.gov/about/mission>

<sup>18</sup> "Setting the Record Straight: HUD's Harmful Proposal to Evict Mixed-Status Immigrant Families." National Low Income Housing Coalition and National Housing Law Project, 17 June 2019. [https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4\\_8e8ed9ebf63749118ed69ddcf26fde1e.pdf](https://7e040224-3024-41df-b549-f4fe8e6b908a.filesusr.com/ugd/d97bc4_8e8ed9ebf63749118ed69ddcf26fde1e.pdf)

<sup>19</sup> Radford, Jynnah and Jens Manuel Krogstad. "Recently arrived U.S. immigrants, growing in number, differ from long-term residents" Pew Research

Center, 3 June 2019. <https://www.pewresearch.org/fact-tank/2019/06/03/recently-arrived-u-s-immigrants-growing-in-number-differ-from-long-term-residents/>

<sup>20</sup> Ibid.

<sup>21</sup> "Housing Assistance, Employment, and Self-Sufficiency." Evidence Matters, HUD Office of Policy Development and Research, 2018. <https://www.huduser.gov/portal/periodicals/em/summer-fall-18/highlight1.html>

<sup>22</sup> U.S. Department of Housing and Urban Development Mission. <https://www.hud.gov/about/mission>

<sup>23</sup> Murguía, Janet. "The American Family Makes This Country Great, and It's in Danger." The New York Times, 2 May 2019. <https://www.nytimes.com/2019/05/02/opinion/trump-immigration-families.html>

<sup>24</sup> "President Trump Proposes Drastic Cuts to Affordable Housing Programs." National Low Income Housing Coalition, 11 Mar 2019. <https://nlihc.org/resource/president-trump-proposes-drastic-cuts-affordable-housing-programs>

<sup>25</sup> "An Alternative Way to Measure Affordability." EDGE Magazine, HUD Office of Policy Development and Research. <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-081417.html>