



State of California
Office of the Attorney General

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ATTORNEY GENERAL

April 17, 2020

Hon. Benjamin S. Carson, Sr., Secretary
Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: Request to Suspend Rulemaking in Light of COVID-19 Pandemic and OMB Directive M-20-16: Docket No. FR-6124-P-01, *Housing and Community Development Act of 1980: Verification of Eligible Status*, 84 Fed. Reg. 20589 (May 10, 2019), RIN 2501-AD89.

Dear Secretary Carson:

As the Attorney General of the State of California, I write to urge the U.S. Department of Housing and Urban Development (HUD) to suspend the rulemaking process for its proposed rule, *Housing and Community Development Act of 1980: Verification of Eligible Status*, 84 Fed. Reg. 20589 (May 10, 2019) (Proposed Rule), while our nation responds to and recovers from the national emergency caused by the novel coronavirus disease (COVID-19) outbreak.¹ Doing so would ensure that vulnerable individuals have the shelter they need to protect themselves, their families, and the public health during the pandemic, and is consistent with the Office of Management and Budget (OMB)'s recent directive requiring agencies to "prioritize all resources to slow the transmission of COVID-19."

Minimizing displacement from housing is critical to reducing the spread of COVID-19 by allowing residents to stay at home as much as possible.² In recognition of the critical need for

¹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² See *The President's Coronavirus Guidelines for America* (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (discouraging gatherings of more than ten people, and urging those who can do so to work or engage in schooling from home); Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), Prevent Getting Sick, Social Distancing* (Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; see also Executive Order, N-33-20 (Mar. 19, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH->



stable housing during the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) imposes a 120-day moratorium on evictions for non-payment of rent or mortgages. P.L. 116-136, 134 Stat. 281, § 4024(b) (Mar. 27, 2020). The federal moratorium applies to all HUD programs, including public housing, the Section 8 Housing Choice Voucher program, Project-Based Section 8, and the Project-Based Voucher program; Low-Income Housing Tax Credit properties; U.S. Department of Agriculture (USDA) housing and the Rural Housing Voucher Program; and housing with a federally backed mortgage or multifamily mortgage loan (i.e., HUD, VA, USDA or Fannie Mae or Freddie Mac loans). Many states and localities also are taking measures to protect tenants from eviction during the COVID-19 pandemic. For example, the California Governor imposed a moratorium on evictions for non-payment of rent resulting from COVID-19 until May 31, 2020.³ The Judicial Council of California expanded those protections with a rule preventing most new eviction cases from proceeding during the ongoing state of emergency and for 90 days after it is lifted.⁴

For HUD to push forward with finalization of the Proposed Rule—which HUD itself has acknowledged will cause homelessness and other housing disruptions for affected families—during the COVID-19 outbreak would undermine all the federal and state efforts discussed above. If the Proposed Rule is implemented, it will force immigrant families to choose between losing their subsidized housing and evicting their ineligible family members, thereby forcing many displaced residents into overcrowded living conditions or homelessness, where they will be less able to protect themselves from COVID-19. For those forced to double-up with other families in overcrowded conditions, social distancing will likely be impossible.

As the CDC has recognized, people experiencing homelessness are particularly at risk for COVID-19 infection. Families and individuals who the Rule will force into a congregate setting such as an emergency shelter will be exposed to risks from shared sleeping facilities and bathrooms, where social distancing also will be challenging.⁵ People experiencing unsheltered homelessness (those sleeping outside or in places not meant for human habitation) are at risk for

[ORDER-03.19.2020-002.pdf](#) (California Governor ordering all individuals to stay at home or at their place of residence, except as needed to maintain continuity of operations of federally designated critical infrastructure sectors). In total, forty-three states and many localities have issued some form of stay-at-home order.

³ Executive Order, N-37-20 (Mar. 27, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf>.

⁴ Emergency Rule 1, Cal. Rules of Court (Apr. 6, 2020), <https://www.courts.ca.gov/documents/appendix-i.pdf>.

⁵ See Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), Interim guidance for homeless service providers to plan and respond to coronavirus disease 2019 (COVID-19)* (Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

infection from community spread of COVID-19, because they lack protection from the environment, quick access to hygiene and sanitation facilities, or connection to healthcare.⁶

The loss of HUD housing during the COVID-19 pandemic would fall particularly hard on immigrants because they have been disproportionately impacted by the current economic downturn. Immigrant workers are over-represented in many of the industries hardest hit by COVID-19, including hotels, restaurants, cleaning services, and personal services such as in-home child care.⁷ Without reliable income, immigrants who would be displaced by the Proposed Rule will face even greater difficulty finding replacement housing. If finalized, the Proposed Rule also would harm immigrant farmworkers, whom the federal government has deemed essential workers.⁸ Because their work is essential to the food supply chain, farmworkers are continuing to work during the COVID-19 outbreak, often in close proximity to others in the fields, packing facilities, and on their way to work.⁹ Implementing the Proposed Rule would deprive many farmworkers of the shelter they need to protect themselves and their families at home.

Any efforts by HUD to finalize the Proposed Rule also would be inconsistent with the OMB's Directive M-20-16, Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19, issued on March 17, 2020. OMB Directive M-20-16 instructs agency heads to focus on mission-critical work and "prioritize all resources to slow the transmission of COVID-19."¹⁰ There is no argument that using agency resources to finalize or implement the Proposed Rule would slow the transmission of COVID-19: quite to the contrary, as discussed above. Nor can finalizing or implementing this dramatic reversal of almost three decades of consistent agency policy, which does not respond to any actual changed conditions, be considered mission-critical.

⁶ Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), Responding to Coronavirus Disease 2019 (COVID-19) among People Experiencing Unsheltered Homelessness, Interim Guidance* (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>.

⁷ Migration Pol'y Institute, *Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable* at 1, 6-11 (Mar. 2020), <https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response>.

⁸ N.Y. Times, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic* (Apr. 2, 2020), <https://nyti.ms/39HIMzv>.

⁹ *Id.*; L.A. Times, *Farmworkers face coronavirus risk: 'You can't pick strawberries over Zoom'* (Apr. 1, 2020), <https://www.latimes.com/california/story/2020-04-01/california-farmworkers-coronavirus>.

¹⁰ Memorandum from Russell T. Vought, Acting OMB Director, to Heads of Departments and Agencies, Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19 (Mar. 17, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

Further, the Proposed Rule, if implemented, will require many HUD residents to obtain paper identification documents from government offices in order to verify their citizenship or eligible immigration status. Requiring the public to visit government offices at this time is inconsistent with the instruction in OMB Directive M-20-16 that the “[g]overnment must immediately adjust operations and services to minimize face-to-face interactions, especially at those offices or sites where people may be gathering in close proximity or where highly vulnerable populations obtain services.” It would be unconscionable for HUD to require its residents to expose themselves to possible infection to comply with the Proposed Rule.

Moreover, many HUD residents would be unable to obtain the required identification documents at all, because most government offices are closed to the public and experiencing significant delays in providing documents by mail. For example, U.S. Citizenship and Immigration Services has suspended in-person services through at least May 3, and has not provided an estimate for when certificates of citizenship and naturalization may arrive by mail.¹¹ The U.S. Department of State, which provides consular reports of births abroad, anticipates “significant delays” beyond the usual four- to eight-week processing time.¹² And the California Department of Public Health anticipates at least a three-week wait time for mail-in birth certificate requests.¹³ HUD residents who cannot obtain the required identification documents will lose their subsidized housing, even if they are citizens or eligible noncitizens. In keeping with the OMB Directive, and as a matter of fundamental fairness, HUD should immediately focus all resources on the critical issues HUD residents and housing providers face in responding to the COVID-19 pandemic, rather than expending any resources to finalize or implement the Proposed Rule.

The COVID-19 pandemic will dramatically exacerbate the harms to HUD residents under the Proposed Rule, if finalized. I urge that you immediately halt finalization and implementation of the Proposed Rule pending successful containment of the novel coronavirus and recovery from the pandemic.

Sincerely,



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California Attorney General

¹¹ *USCIS Response to Coronavirus 2019 (COVID-19)*, U.S. Citizenship and Immigration Services (last visited April 15, 2020), <https://www.uscis.gov/about-us/uscis-response-coronavirus-2019-covid-19>.

¹² *How to Replace or Amend a Consular Report of Birth Abroad (CRBA)*, U.S. Department of State (last visited April 15, 2020), <https://travel.state.gov/content/travel/en/records-and-authentications/requesting-a-vital-record-as-a-u-s--citizen/replace-amend-CRBA.html>.

¹³ *Vital Records*, California Department of Public Health (last visited April 15, 2020), <https://www.cdph.ca.gov/Programs/CHSI/Pages/Vital-Records-Obtaining-Certified-Copies-of-Birth-Records.aspx>.