



State of California
Office of the Attorney General

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July 9, 2019

Via Federal eRulemaking Portal

The Honorable Ben Carson, Secretary
Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: Comments on Proposed Rule: 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 today to urge the U.S. Department of Housing and Urban Development (HUD) to withdraw its proposed rule: “Housing and Community Development Act of 1980: Verification of Eligible Status,” 84 Fed. Reg. 20589 (May 10, 2019) (Proposed Rule). The Proposed Rule would severely harm California’s immigrant community by forcing families to choose between evicting family members and losing their affordable housing, potentially leading to homelessness. Much like the country as a whole, California is a state of immigrants, and by targeting the immigrant community the Proposed Rule harms a wide range of California’s interests by jeopardizing many California families’ access to affordable housing, increasing burdens on state agencies, and undermining state laws and programs.

These significant costs to California are not offset by any benefits of the Proposed Rule. According to HUD’s own analysis, the likely outcome of the Proposed Rule is to “reduce the quantity and quality of assisted housing.”¹ Furthermore, the Proposed Rule violates the Administrative Procedure Act, the U.S. Constitution, and the Fair Housing Act. For the reasons stated herein, California requests HUD withdraw its Proposed Rule.

¹ U.S. DEP’T OF HOUS. & URBAN DEV., REGULATORY IMPACT ANALYSIS (RIA), AMENDMENTS TO FURTHER IMPLEMENT PROVISIONS OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980, DOCKET NO. FR-6124-P-01, at 3 (Apr. 15, 2019) [hereinafter RIA].



I. INTRODUCTION

On May 10, 2019, HUD published a Proposed Rule that would prohibit “mixed-eligibility families” from receiving HUD assistance in public housing, Section 8, and other programs.² Mixed-eligibility families are households that include members who are both eligible and ineligible for housing assistance based on their immigration status. Currently, HUD permits mixed-eligibility families to live together in subsidized housing. For these families, HUD decreases the housing subsidy to exclude the ineligible person from the assistance. In a major shift, under the Proposed Rule, all families with an ineligible member will be barred from receiving any federal housing assistance and will face eviction from subsidized housing. The consequence of this change, as HUD itself acknowledges, is forcing a “ruthless” decision on families about whether to evict a mother, father, brother, sister, or child, or instead face potential homelessness as a family.³ Moreover, U.S. citizens and eligible non-citizens who cannot meet new status verification requirements will also face losing their housing. This inhumane, cruel policy targets immigrants and families who are important members of communities throughout the State of California and collaterally affects all HUD program recipients.

Beyond its draconian impact on individuals, the Proposed Rule will adversely affect California as a whole by undermining our State’s investment in our communities and commitment to supporting families from all backgrounds. The Proposed Rule:

- **Targets Immigrants and People of Color:** HUD’s denial of subsidies to eligible families based on an ineligible individual’s presence in a household will have a disproportionate impact based on national origin and ethnicity.
- **Hurts Families:** The Proposed Rule forces California mixed-eligibility families to make what is, in HUD’s own words, a “ruthless” choice of forcing ineligible family members to move out lest the whole family lose its subsidy, resulting in potential homelessness.
- **Targets and Harms Vulnerable Populations:** The Proposed Rule will harm the State’s most vulnerable populations, with dire effects on children, individuals with disabilities, elders, and others whose needs for housing assistance are particularly acute.

² Housing and Community Development Act of 1980: Verification of Eligible Status, 84 Fed. Reg. 20589 (proposed May 10, 2019) (to be codified at 24 CFR 5 pt. 5) [hereinafter Housing and Community Development Act of 1980: Verification of Eligible Status].

³ RIA, *supra* note 1, at 16.

- **Exacerbates Homelessness:** The Proposed Rule will increase homelessness and decrease the availability of affordable housing by forcing local housing providers to evict families, adding to California's affordable housing and homelessness crises.
- **Creates a Chilling Effect in Communities:** The Proposed Rule will have a chilling effect even on those not directly subject to it, causing eligible families to forgo needed housing subsidies.
- **Harms State Programs:** The Proposed Rule will impose substantial costs on California state agencies that administer, coordinate with, or are affected by HUD programs, including administrative costs, disruption of housing planning, increased housing turnover, additional civil rights violation investigations, and greater homelessness assistance costs.
- **Violates the Law:** Not only does the Proposed Rule undermine State law and policy, it violates the federal Constitution, Administrative Procedure Act, and Fair Housing Act.

II. BACKGROUND

California is fortunate to be home to more than 10 million immigrants from around the world, the largest immigrant population in the United States. Immigrants are vital to our State's workforce and economic success. As a result of their efforts, California has become the United States' economic engine and the fifth-largest economy in the world. Overall, 6.6 million immigrants work in our State, comprising over a third of California's workforce.⁴ Immigrants fill over two-thirds of the jobs in the agricultural and related sectors and almost half of those in manufacturing.⁵ Further, 43% of construction workers and 41% of technology workers are immigrants.⁶ These immigrant workers and their families add billions to our State's economy and generate billions more as entrepreneurs. In 2014, immigrant-led households paid over \$26 billion in state and local taxes and exercised almost \$240 billion in spending power.⁷ Immigrant business owners accounted for over 38% of all self-employed Californians and generated almost \$22 billion in business income in 2015. These contributions were particularly pronounced in the Los Angeles and Silicon Valley regions, where over 40% of business owners are immigrants.⁸ Ubiquitous technology companies, such as Google, eBay, and Tesla, were founded in California by immigrants. Simply put, immigrants are the backbone of California's economy, and thereby, the backbone of the nation's economy.

⁴ AM. IMMIGR. COUNCIL, *IMMIGRANTS IN CALIFORNIA* (Oct. 4, 2017), <https://tinyurl.com/CAP-Immigrants-in-CA>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

California's diversity has influenced its policy agenda, leading the State to design and adopt programs that meet residents' needs. Public benefit programs often involve numerous funding streams, and are administered by multiple federal, state, and local agencies that use complex outreach, intake, and eligibility processes. California chooses to implement "no-wrong door," single-entry systems to help provide its diverse communities with access to, and to increase the use of, critical benefits that support all of society when appropriately utilized. To implement that choice, California invests in a number of state-funded programs that support families, including mixed-eligibility families. Our programs reduce barriers to services and allow mixed-eligibility families to maintain strong family bonds, live healthier lives, and remain in their homes and in the workforce.

Most immigrants in California are naturalized citizens or legal residents.⁹ The overwhelming majority of Californian immigrants are long-term residents; in fact, 85% of all California's immigrants have lived in the U.S. for 10 years or more.¹⁰ And over four million of California's children have at least one immigrant parent; 90% of those children are U.S.-born citizens.¹¹ Nearly five million Californians—12% of the State's total population—live in households with at least one undocumented family member. Many members of immigrant communities maintain strong familial relationships.¹² For immigrants especially, extended families often function as a safety net during economic hardship and other times of need.¹³ In short, it is clear that the Proposed Rule will have a significant and long-term impact on millions of Californians, their families, and communities.

A. HUD's Current Rule, Its Application, and Proposed Changes

The Proposed Rule would change HUD's implementing regulations of Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. § 1436a

⁹ Roughly 52% of California's immigrant population are naturalized U.S. citizens, 34% have a legal status (are either green card or visa holders), and about 14% are undocumented. Hans Johnson & Sergio Sanchez, *Immigrants in California*, PUB. POL'Y INST. CAL. (2019), <https://tinyurl.com/Immigrants-in-California>.

¹⁰ Grantmakers Concerned with Immigrants and Refugees (in partnership USC Dornsife, Ctr. for the Study of Immigrant Integration), *California Immigrant Snapshot* (revised March 29, 2018), <https://www.gcir.org/resources/california-immigration-snapshot>.

¹¹ Migration Pol'y Inst., *California Immigrant Snapshot* (2016), <https://tinyurl.com/children-in-immigrant-fam>; see also KidsData, *Half of CA children have immigrant parents* (Feb. 10, 2017) <http://www.kidsdata.org/blog/?p=7804> (estimating that 4.5 million children in California have at least one immigrant parent).

¹² Yoshinori Kamo, *Racial and Ethnic Differences in Extended Family Households*, 43 SOC. PERSP., 211, 211-29 (2000), <https://www.jstor.org/stable/1389794>.

¹³ *Id.* at 212, 227.

(Section 214). Section 214 prohibits HUD from making financial assistance available to certain categories of non-citizens and applies to the following federal housing assistance programs:

- Public Housing;
- Section 8 Housing Choice Vouchers;
- Section 8 Project-Based Housing;
- Section 235 Home Loan Program;
- Section 236 Rental Assistance Program;
- The Rent Supplement Program; and
- Housing Development Grant Programs (low-income units only).¹⁴

HUD's current implementing regulations, 24 C.F.R. § 5, require that each family member applying for assistance under a Section 214 covered program either: (1) submit a declaration declaring that he or she is a citizen or eligible noncitizen; or (2) elect not to contend eligible immigration status and, therefore, not submit documentation for verification. Being ineligible for federal housing assistance is not synonymous with being undocumented.¹⁵ If a family member of an otherwise eligible household does not contend eligible status, then the family is a mixed-eligibility family. The regulations require that HUD prorate financial assistance made available to a mixed-eligibility family based on the number of individuals in the family for whom eligibility has been established.¹⁶

The Proposed Rule would make three changes to eligibility requirements in HUD's Section 214 public and assisted housing programs. First, all household members living with a recipient of Section 214 HUD housing assistance under the age of 62¹⁷

¹⁴ See 42 U.S.C. § 1436a (2016); NATIONAL HOUSING LAW PROJECT, OVERVIEW: IMMIGRATION STATUS AND FEDERALLY ASSISTED HOUSING (JAN. 2010), http://nhlp.org/files/Jan%202010%20Newsletter%20FINAL_0.pdf.

¹⁵ Many immigrants with legal status are ineligible for certain federally subsidized housing. For example, U-visa holder victims of crime, persons with Temporary Protected Status, and students on educational visas are legally present for immigration purposes but ineligible for federal housing subsidies. Under the Proposed Rule, these documented immigrants' membership in a household would disqualify other household members from receiving HUD assistance.

¹⁶ 24 C.F.R. § 5.520 (2016).

¹⁷ Individuals 62 years of age or older who claim eligible immigration status are currently exempted from the immigration status verification requirements. 42 U.S.C. § 1436a(d)(2). Under the Proposed Rule, these individuals would be required to submit, in addition to proof of age, one of the documents approved by the Department of Homeland Security (DHS) as acceptable evidence of immigration status.

would be required to verify their eligible immigration status.¹⁸ As stated above, HUD currently only requires those family members who are applying for housing assistance to have their immigration status verified—family members who would not qualify for assistance based on their immigration status can elect not to contend eligibility for the housing assistance, allowing the family to receive assistance on a prorated basis. The Proposed Rule would instead require all household members under the age of 62 to submit verification of their immigration status through Department of Homeland Security’s (DHS) Systematic Alien Verification for Entitlements (SAVE) system, which requires specified identification documents.¹⁹

Second, eligible members of a household will not receive housing assistance if any member residing in the assisted units is ineligible for assistance.²⁰ Under current rules, HUD does not deny assistance to a family with an ineligible family member as long as there is at least one family member who is eligible. Instead, the ineligible family member affects the amount of assistance mixed-eligibility households receive, which is prorated based on the number of household members, the total household income (including the income of ineligible members), the number of eligible members of the household, and the type of rent subsidy in the covered unit. For example, a four-person household with one ineligible member receives 75% of what it would receive if every member were eligible. Instead of a 75% subsidy, the Proposed Rule would deny any subsidy to the household because it contains an ineligible member. Households may apply to receive up to three six-month deferments before losing assistance if they can demonstrate that the additional time is “necessary . . . to permit the family additional time for the orderly transition . . . to other affordable housing.”²¹ However, the Proposed Rule is not clear on what criteria would be used to determine whether this additional time is, in fact, necessary, raising the specter of arbitrary decision-making by HUD.

Third, individuals who SAVE finds ineligible for HUD assistance would be prohibited from serving as the leaseholder of HUD-assisted housing. For most HUD subsidy recipients, this provision is duplicative of the requirement that all household members verify eligibility to receive subsidies. However, a small subset of recipients

¹⁸ 42 U.S.C. § 1436a. Individuals eligible for HUD assistance include U.S. citizens and nationals and 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 section 207 or those granted asylum under section 208 of the INA; (3) those paroled into the United States under section 212(d)(5) of the INA; and (4) those granted withholding of removal under section 241(b)(3) of the INA.

¹⁹ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2.

²⁰ *Id.* at § 5.506.

²¹ *Id.* at § 5.518. (the Proposed Rule is not clear how an owner or household could verify this consistently).

who were receiving assistance as of June 19, 1995, may still receive prorated assistance if the leaseholder is eligible and the ineligible family member is a spouse, child, or parent of the leaseholder.²²

B. Californians' Use of HUD Programs

California is the state which would be most impacted by the Proposed Rule, with 37% of the country's mixed-eligibility households.²³ The programs most affected by the rule in California include: (1) the Housing Choice Voucher (HCV) Program; (2) the Section 8 Project-Based Rental Assistance (PBRA); and (3) Public Housing. As of 2017, more than five million people in over two million low-income families used HCV Program,²⁴ including almost 690,000 Californians.²⁵ More than 2 million people used PBRA, including almost 170,000 Californians.²⁶ And over two million people lived in public housing as of 2017, including over 76,000 Californians.²⁷

The aggregate number of California households and individuals affected by the Proposed Rule is considerable:

²² *Id.* at § 5.506.

²³ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2; RIA, *supra* note 1, at 6.

²⁴ CTR. ON BUDGET POL'Y PRIORITIES (CBPP), POLICY BASICS: THE HOUSING CHOICE VOUCHER PROGRAM (May 3, 2017), <https://tinyurl.com/CBPP-Housing-Voucher-Programs> (see "National and State Housing Fact Sheets & Data" link for California).

²⁵ OFFICE OF POL'Y DEVELOPMENT AND RESEARCH, ASSISTED HOUSING: NATIONAL AND LOCAL (accessed on Oct. 31, 2018), <https://www.huduser.gov/portal/datasets/assthsg.html>.

²⁶ *Id.*

²⁷ *Id.*

| California Families Receiving HUD Section 214 Assistance²⁸ | | | | | |
|--|-------------------------------|--|--|----------|--------------|
| Total CA Households Receiving Assistance | Households with a non-citizen | Household with an ineligible non-citizen | Total CA Individuals Receiving Assistance | Citizens | Non-citizens |
| 436,340 | 63,390 | 9,320 | 936,830 | 846,670 | 85,920 |

The Proposed Rule’s new verification processes would affect 936,830 Californians and its rollback of eligibility would affect 9,320 mixed-eligibility households who face potential termination from HUD programs. According to HUD, most mixed-eligibility households consist of three eligible members and one ineligible member.²⁹ With 9,320 households with an ineligible non-citizen, that equates to 37,280 Californians at risk of immediate eviction or family separation.

Those who are ineligible for housing assistance under the Proposed Rule include individuals in the U.S. on temporary employment or student visas, persons granted Temporary Protected Status, recipients of Deferred Action for Childhood Arrivals (DACA), and survivors of serious crimes granted U non-immigrant status.³⁰ Because of the Proposed Rule’s widespread impact on immigrant families, however, it could also have a chilling effect as households with noncitizens who decide not to seek or to leave housing subsidy programs even though they are eligible. Nearly 13%, or 55,580, California households include a noncitizen who is eligible for HUD rental assistance, and over half of these households include an eligible citizen who is 62 or older.³¹

The Proposed Rule will likely affect particularly vulnerable populations. Over two-thirds of Californians who rely on HUD subsidies are seniors, children, or people

²⁸ CTR. ON BUDGET POL’Y PRIORITIES, FAMILIES RECEIVING ASSISTANCE FROM PUBLIC HOUSING, SECTION 8 PROJECT-BASED RENTAL ASSISTANCE, SECTION 8 MODERATE REHABILITATION, OR HOUSING CHOICE VOUCHER PROGRAM, https://docs.wixstatic.com/ugd/d97bc4_c9d58b0ad9df40f6a4dc63924a65b1a4.pdf [hereinafter FAMILIES RECEIVING ASSISTANCE FROM PUBLIC HOUSING]; *see also* CTR. ON BUDGET POL’Y PRIORITIES, FEDERAL RENTAL ASSISTANCE FACT SHEETS (CALIFORNIA) (last visited June 26, 2019), <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#CA> (finding 1,062,400 people in 526,000 California households use federal rental assistance).

²⁹ RIA, *supra* note 1, at 6.

³⁰ NATIONAL HOUSING LAW PROJECT, Q&A ON HUD PROPOSED RULE ON MIXED-STATUS FAMILIES (June 12, 2019), https://docs.wixstatic.com/ugd/d97bc4_453d2096b99343a888efc3c3bfbfb07a.pdf.

³¹ FAMILIES RECEIVING ASSISTANCE FROM PUBLIC HOUSING, *supra* note 29.

with disabilities.³² A survey conducted from 2007 to 2010 of California households receiving Housing Choice Voucher (HCV) assistance—the largest HUD rental assistance program in the State—found that nearly half had at least one child and nearly half had at least one member with a disability.³³ Families with an elderly head of household accounted for 29% of recipients.³⁴ Additionally, HCV recipients were disproportionately households of color; African-American, Latino and Asian Americans receive nearly two-thirds of program vouchers.³⁵

C. The Proposed Rule, as Part of a Sustained Effort by the Trump Administration to Target Immigrant Families, Inhibits Immigrants' Societal Integration.

The Proposed Rule is not an isolated instance of the Trump Administration targeting immigrant families with punitive and unlawful policies. As has been well publicized, the Administration has pushed, among other initiatives, the following policies:

- Making it more difficult for immigrants who use an array of public benefits (including housing benefits and many others) to gain admission to the United States or adjust their immigration status and become a legal permanent resident;³⁶
- Rescinding the Deferred Action for Childhood Arrivals program;³⁷

³² CTR. ON BUDGET POL'Y PRIORITIES, POLICY BASICS: FEDERAL RENTAL ASSISTANCE (November 15, 2017), <https://www.cbpp.org/research/housing/policy-basics-federal-rental-assistance> (see “National and State Housing Facts Sheets & Data” link for California). [hereinafter POLICY BASICS: FEDERAL RENTAL ASSISTANCE].

³³ See CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING 5-5 (Sept. 2012), http://www.hcd.ca.gov/policy-research/plans-reports/docs/ai_final_chapt5_hsg_voucher0912.pdf.

³⁴ *Id.*

³⁵ *Id.* at 5-9.

³⁶ *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51114 (Proposed Oct. 10, 2018)(to be codified at 8 CFR 103, 212-14, 245, 248).

³⁷ Memorandum from Elaine Duke, Acting Sec'y of Dep't of Homeland Sec. to James McCament, Acting Dir., U.S. Citizenship & Immigration Serv., Thomas Homan, Acting Dir.c, U.S. Immigration & Customs Enforcement, Kevin McAleenan, Acting Commissioner, U.S. Customs & Border Protection, Joseph Maher, Acting General Counsel, Ambassador James Nealon, Assistant Sec'y, International Engagement, & Julie M. Kirchner, Citizenship & Immigration Services Ombudsman on Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017) <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

- Imposing a ban on travelers from Muslim-majority countries;³⁸ and
- Terminating Temporary Protected Status for individuals from countries with non-white majorities.³⁹

All of these initiatives were blocked by trial and appellate courts, and most remain so.⁴⁰ Although some of the Trump Administration's unlawful overreach has been halted, these policies have taken a serious toll on immigrant communities. For example, polls have shown sharp increases in the percentage of Latinos who have "serious concerns about their place in American society," particularly immigrants.⁴¹ And the level of fear among immigrants has led to declines in their willingness to report crime, harming not only the individual victims but society as a whole.⁴²

D. The Proposed Rule's Effect on California Families and Communities

Loss of housing assistance will seriously harm affected families. Housing vouchers have been repeatedly shown to improve children's educational and health outcomes, and

³⁸ Exec. Order No. 13769 (Jan. 27, 2017).

³⁹ See, e.g., *Termination of the Designation of El Salvador for Temporary Protected Status*, 83 Fed. Reg. 2654 (Jan. 18, 2018).

⁴⁰ *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018) (affirming the District Court's nationwide preliminary injunction of the government's rescission of DACA); *Ramos v. Nielsen*, 336 F. Supp. 3d 1075 (N.D. Cal. 2018) (enjoining the government from terminating Temporary Protected Status designations for individuals from Sudan, Haiti, El Salvador and Nicaragua); *Hawaii v. Trump*, 878 F.3d 662 (9th Cir. 2017) (affirming in part the District Court's preliminary injunction regarding the Presidential Proclamation that denied people from Iran, Libya, Syria, Yemen, Somalia, and Chad entry into United States), *rev'd*, 138 S. Ct. 2392 (2018); see also *City of San Jose et al. v. Ross et al.*, 18-cv-2279 (N.D. Cal.) (holding that the decision to add a citizenship question to the Decennial Census violated the Constitution).

⁴¹ PEW RESEARCH CTR., MORE LATINOS HAVE SERIOUS CONCERNS ABOUT THEIR PLACE IN AMERICA UNDER TRUMP (Oct. 2018), <https://www.pewhispanic.org/2018/10/25/more-latinos-have-serious-concerns-about-their-place-in-america-under-trump/>.

⁴² Lindsay Bever, *Immigration Debate Might be Having a Chilling Effect on Crime Reporting in Hispanic Communities Police Say*, WASH. POST. (May 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.5c82b7dc8989.

to help pull their families out of poverty.⁴³ Indeed, children whose families were able to move to higher opportunity neighborhoods due to their receipt of housing assistance experienced long-term improvements in their income and educational attainment,⁴⁴ as well as reduced homelessness, housing instability, and overcrowding.⁴⁵ Moreover, HUD's own studies suggest young adults who lived in publicly assisted housing had increased earnings and reduced likelihood of incarceration,⁴⁶ and improved long-term self-sufficiency.⁴⁷ The Proposed Rule places all of these gains at risk.

And the impact of losing housing vouchers will, for many people, extend well beyond housing itself. Many housing authorities provide a suite of “wraparound” services to public housing residents, including employment, clinical, health, and financial literacy services.⁴⁸ San Francisco, for example, is part of an innovative program aimed at families who interface with the child welfare system and are at risk of homelessness.⁴⁹ In addition to a housing voucher, these families receive intensive case management services,

⁴³ See WILL FISCHER, CTR. ON BUDGET POL'Y PRIORITIES, RESEARCH SHOWS HOUSING VOUCHERS REDUCE HARDSHIP AND PROVIDE PLATFORM FOR LONG-TERM GAINS AMONG CHILDREN (Oct. 7, 2015), <https://tinyurl.com/CBPP-housing-voucher-gains>; see also LINDA GIANNARELLI, ET AL., URBAN INST., REDUCING CHILD POVERTY IN THE US: COSTS AND IMPACTS OF POLICIES PROPOSED BY THE CHILDREN'S DEFENSE FUND (Jan. 2015), <https://www.urban.org/sites/default/files/publication/39141/2000086-Reducing-Child-Poverty-in-the-US.pdf>.

⁴⁴ See Kristin F. Butcher, *Assessing the Long-Run Benefits of Transfers to Low-Income Families*, BROOKINGS METRO (Jan. 2017), https://www.brookings.edu/wp-content/uploads/2017/01/wp26_butcher_transfers_final.pdf.

⁴⁵ WILL FISCHER, CTR. ON BUDGET POL'Y PRIORITIES, RESEARCH SHOWS HOUSING VOUCHERS REDUCE HARDSHIP AND PROVIDE PLATFORM FOR LONG-TERM GAINS AMONG CHILDREN (Oct. 2015), <https://tinyurl.com/CBPP-housing-voucher-gains>.

⁴⁶ U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEVELOPMENT AND RESEARCH (PD&R) CHILDHOOD HOUSING AND ADULT EARNINGS: A BETWEEN-SIBLINGS ANALYSIS OF HOUSING VOUCHERS AND PUBLIC HOUSING (Oct. 2016), <https://www.huduser.gov/portal/sites/default/files/pdf/Childhood-Housing-Adult-Earnings.pdf>.

⁴⁷ U.S. DEP'T OF HOUS. & URBAN DEV., THE LONG TERM EFFECTS OF HOUSING ASSISTANCE ON SELF-SUFFICIENCY (Dec. 1999), <https://www.huduser.gov/portal/Publications/pdf/longterm.pdf>.

⁴⁸ U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEVELOPMENT AND RESEARCH THE HOUSING OPPORTUNITY AND SERVICES TOGETHER (HOST) DEMONSTRATION, CHICAGO HOUSING AUTHORITY (last visited Jun. 25, 2019), https://www.huduser.gov/portal/pdredge/pdr_edge_hudpartprt_021012_1.html.

⁴⁹ MARY K. CUNNINGHAM ET AL., URBAN INST., SUPPORTIVE HOUSING FOR HIGH-NEED FAMILIES IN THE CHILD WELFARE SYSTEM (Nov. 12, 2014), <https://tinyurl.com/HUD-support-for-high-need-fam>.

including mental and behavioral healthcare, parenting classes, and peer support, as well as referrals to other benefits. And in San Diego, in addition to providing rental subsidies, one program targets homeless families with children by engaging parents in work-readiness services while contributing to the children's academic development and progress.⁵⁰ All of these will be lost to eligible families who lose their public housing assistance, harming families and their communities, and ultimately undermining program effectiveness.

1. The Rule Will Harm the State's Most Vulnerable Residents

Some of California's most vulnerable residents are also among the most likely to be harmed by the Proposed Rule. For example, it will have a disproportionate effect on families with children, as HUD itself notes.⁵¹ HUD's analysis states that approximately 70% of mixed-eligibility households consist of eligible children and ineligible parents, equating to 55,000 affected children.⁵² HUD acknowledges that children are unlikely, and in many cases unable, to secure housing separate from their parents, and that the likely result is for entire families to leave assisted housing.⁵³ HUD rightly frames forcing this decision as "ruthless."⁵⁴ Local housing authorities confirm this impact, with the Fresno Housing Authority alone estimating that 1,300 children in Fresno could be displaced under the rule (costing the agency half a million dollars).⁵⁵ Similarly, the Housing Authority of the City of Los Angeles calculated that "the net effect of the Proposed Rule, then, is to throw over 11,000 of our neediest residents out of their homes."⁵⁶ Many individuals, and particularly children, may not have other housing options and will end up under-housed or homeless as a result of the rule.

Homelessness can have a severe negative impact on children. A 2017 federal study showed that young children who were forced to stay in shelters had higher risks of developmental delays and higher rates of behavioral challenges, and they fell behind

⁵⁰ SAN DIEGO HOUSING COMMISSION, MOVING TO WORK PROGRAM ANNUAL PLAN FOR FISCAL YEAR 2020 12, <https://www.sdhc.org/wp-content/uploads/2019/04/FY2020-MTW-Annual-Plan-Pend-HUD-Approval.pdf>

⁵¹ RIA, *supra* note 1, at 6 ("Among these mixed households [. . .] 73% are children").

⁵² *Id.* at 8 ("A larger fraction (70%) of households consist of eligible children and ineligible parents").

⁵³ *Id.* at 8, 9 (finding separating from a parent "improbable").

⁵⁴ *Id.* at 16.

⁵⁵ Yesenia Amaro, *Here's how many Fresno kids would be displaced under HUD's undocumented proposal*, THE FRESNO BEE (May 16, 2019), <https://www.fresnobee.com/news/local/article230408069.html>.

⁵⁶ Letter from Hous. Authority of the City of Los Angeles to U.S. Dep't of Hous. & Urban Dev. (May 13, 2019).

academically.⁵⁷ In California in particular, dropout rates are almost double for homeless students.⁵⁸ A HUD study of homeless parents' likelihood to enroll their children in preschool noted that childhood homelessness results in "increased emotional distress and decreased academic achievement."⁵⁹

Another vulnerable population affected by the Proposed Rule is survivors of domestic violence and sexual assault, who are at particular risk from this policy and its impact of increased homelessness.⁶⁰ Federal housing assistance can be a critical part of survivors' ability to leave abusive relationships by creating a pathway to safety and playing a significant role in preventing future harm.⁶¹ Under the Proposed Rule, a mixed-eligibility family fleeing an abuser would be ineligible for any assistance. For example, an ineligible mother with a U-visa who has survived domestic abuse along with her two U.S.-citizen children can currently receive prorated HUD subsidies to leave their abuser. Under the Proposed Rule, the family would not be eligible for any subsidy, or if already housed would face loss of subsidy and/or eviction. Eliminating survivors' eligibility based on their or their children's immigration status would deprive them of this crucial tool.

⁵⁷ SCOTT R. BROWN, MARYBETH SHINN, & JILL KHADDURI, DEP'T OF HEALTH & HUMAN SERV., ADMIN, OF CHILDREN & FAMILIES, WELL-BEING OF YOUNG CHILDREN AFTER EXPERIENCING HOMELESSNESS (Jan. 2017), https://www.acf.hhs.gov/sites/default/files/opre/opre_homefam_brief3_hhs_children_02_24_2017_b508.pdf.

⁵⁸ John Fensterwald, *California's graduation rate ticks up but, still, 1 in 10 high school students drops out*, EDSOURCE (Nov. 27, 2018), <https://edsource.org/2018/californias-graduation-rate-ticks-up-but-still-1-in-10-high-school-students-drops-out/605378>.

⁵⁹ U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEV. & RESEARCH, A QUALITATIVE ASSESSMENT OF PARENTAL PRESCHOOL CHOICES AND CHALLENGES AMONG FAMILIES EXPERIENCING HOMELESSNESS (Mar. 2016), <https://www.huduser.gov/portal/sites/default/files/pdf/parental-preschool-choices.pdf>.

⁶⁰ GRACE HUANG, J.D., ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, ADVISORY: HOW DO RECENT HUD PROPOSED RULES ABOUT VERIFICATION OF IMMIGRATION STATUS IMPACT SURVIVORS OF DOMESTIC VIOLENCE & SEXUAL ASSAULT? (May 2019), https://docs.wixstatic.com/ugd/d97bc4_1927426097e04b00a82e573f8cb18fb1.pdf.

⁶¹ PHYLLIS HOLDITCH NIOLON, PH.D., ET. AL., CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION, PREVENTING INTIMATE PARTNER VIOLENCE ACROSS THE LIFESPAN: A TECHNICAL PACKAGE OF PROGRAMS, POLICIES, AND PRACTICES (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

E. The Proposed Rule Will Exacerbate California’s Housing and Homelessness Crises.

The Proposed Rule’s harms are magnified because California is in the midst of a dire housing crisis.⁶² The State faces unprecedented challenges as it works to house its population: increasing unaffordability, insufficient supply, escalating homelessness, and the attendant costs of housing insecurity.⁶³

Each year, Californians spend \$50 to \$60 billion more than they can afford on housing.⁶⁴ California hosts the country’s most expensive rental markets,⁶⁵ and more than half of adults say their housing costs cause financial strain.⁶⁶ These costs particularly affect low-income Californians, who must spend a great portion of their income on housing: While almost a third of Californians already spend more than half their income on rent,⁶⁷ more than two-thirds of low-income households would have to spend that much on rent to afford the local cost of housing.⁶⁸ A McKinsey report found that “virtually none” of California’s low-income and very-low-income households can afford the local cost of housing.⁶⁹ Currently, a renter in Los Angeles County would need to make \$47.52

⁶² See, e.g., MAC TAYLOR, LEGISLATIVE ANALYST’S OFFICE, CALIFORNIA’S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES (March 17, 2015), <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>.

⁶³ See, e.g., MCKINSEY GLOBAL INSTITUTE, A TOOL KIT TO CLOSE CALIFORNIA’S HOUSING GAP: 3.5 MILLION HOMES BY 2025 (October 2016), <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Urbanization/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.ashx> [hereinafter A TOOL KIT TO CLOSE CALIFORNIA’S HOUSING GAP].

⁶⁴ *Id.* at 4, 45.

⁶⁵ Jeremiah Hensen, *Here are the top 10 most expensive rental markets in the U.S.*, HOUSING WIRE (May 1, 2018), <https://www.housingwire.com/articles/43253-here-are-the-top-10-most-expensive-rental-markets-in-the-us>.

⁶⁶ Jill Cowan, *What Californians Think About the Housing Crisis and Wildfires*, N.Y. TIMES (June 7, 2019), <https://www.nytimes.com/2019/06/07/us/housing-crisis-california-wildfire-costs.html>.

⁶⁷ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, RENTER COST BURDENS, STATES, (last visited June 11, 2019), https://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_state_total.

⁶⁸ A TOOL KIT TO CLOSE CALIFORNIA’S HOUSING GAP, *supra* note 65, at 5.

⁶⁹ *Id.* at 4, 6. The housing crisis impacts both urban and rural areas. Of the 5.9 million California households unable to afford the cost of housing, approximately 62% live in the inner San Francisco Bay Area and the greater Los Angeles-Long Beach-Anaheim area. However, in rural areas, such as the area around Santa Cruz-Watsonville, 57% of households cannot afford the housing costs. In nearby Salinas and Clearlake, 50% of households are unable to afford local housing costs.

per hour, more than triple the minimum wage, to afford the median monthly rent.⁷⁰ Not surprisingly, California has the second highest national rate of overcrowding in housing, with a rate of 8.4%, more than twice the national average of 3.4%.⁷¹

Paying this much for rent makes it increasingly difficult for Californians to meet their other basic needs, such as food, clothing, medicine, and transportation.⁷² The crisis forces the State's most vulnerable households to make trade-offs between housing and these other necessities.⁷³ Any housing instability makes it more difficult to access these basic needs, creating a cascade of serious effects.⁷⁴ Rising housing costs lead to

⁷⁰ CALIFORNIA HOUSING PARTNERSHIP, LOS ANGELES COUNTY'S HOUSING EMERGENCY UPDATE (May 2019), <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Los-Angeles-HNR-2019.pdf>.

⁷¹ CAL. DEP'T OF HOUS. & COMMUNITY DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES: FINAL STATEWIDE HOUSING ASSESSMENT 2025 (Feb. 2018), http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf. A housing unit is considered "overcrowded" when there is more than one resident per room (including bedrooms, kitchens, living rooms, etc.) [hereinafter CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES: FINAL STATEWIDE HOUSING ASSESSMENT 2025].

⁷² JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2018 32 (2018), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf [hereinafter THE STATE OF THE NATION'S HOUSING 2018].

⁷³ A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP, *supra* note 65, at 5-6.

⁷⁴ For example, being evicted increases the number of emergency room visits in the two years after filing by over 70%. COLLINSON, R. & REED, D., *THE EFFECTS OF EVICTIONS ON LOW-INCOME HOUSEHOLDS* (2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf. Housing loss has also been found to precipitate suicide. *See, e.g.,* Fowler, K.A. et al., *Increase in suicides associated with home eviction and foreclosure during the US housing crisis: Findings from 16 National Violent Death Reporting System States, 2005–2010*, AM. J. OF PUB. HEALTH (2015). As discussed above, young children in shelters have higher risks for developmental delays, higher rates of behavioral challenges, and higher problems with peers. DEP'T. OF HEALTH & HUMAN SERVICES, OFFICE OF PLANNING, RESEARCH, AND EVALUATION, *WELL-BEING OF YOUNG CHILDREN EXPERIENCING HOMELESSNESS 2* (2017). Whereas children living in assisted housing have lower incarceration rates across all household race/ethnicity groups. DEP'T. OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEVELOPMENT AND RESEARCH, *CHILDHOOD HOUSING AND ADULT EARNINGS: A BETWEEN-SIBLINGS ANALYSIS OF HOUSING VOUCHERS AND PUBLIC HOUSING*, OFFICE OF POLICY DEVELOPMENT AND RESEARCH (2016), <https://www.huduser.gov/portal/sites/default/files/pdf/Childhood-Housing-Adult-Earnings.pdf>.

displacement, and insufficient access to affordable housing or rental assistance pushes many Californians into homelessness.⁷⁵ California has 12% of the nation's population but 22% of its homeless population.⁷⁶ Of the portion of the nation's homeless population that lives without access to any shelter, nearly half live in California.⁷⁷ And this crisis shows no signs of abating.⁷⁸ Los Angeles' homeless population increased 75% in the last 6 years.⁷⁹ At San Jose State University, over 1 in 10 students experienced homelessness in the past year.⁸⁰ Many rural counties, which are already the most expensive in the country,⁸¹ experienced more than a 50% increase in the homeless population since 2017.⁸² And, statewide, California is currently short 2 million homes and needs an additional 1.5 million more by 2025—for a total of 3.5 million.⁸³

In particular, California has a startling number of families and children experiencing homelessness. Almost 21,000 people in families with children were homeless in California in 2018.⁸⁴ California will likely expend significant resources on social services for these homeless families. HUD's own studies have shown that

⁷⁵ A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP, *supra* note 65, at 6.

⁷⁶ CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES: FINAL STATEWIDE HOUSING ASSESSMENT 2025, *supra* note 73, at 1.

⁷⁷ U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF COMMUNITY PLANNING AND DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 14 (Dec. 2018), <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

⁷⁸ A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP, *supra* note 65, at 4. ("If the shortage is not addressed, it will intensify.").

⁷⁹ Gale Holland, *L.A.'s homelessness surged 75% in six years. Here's why the crisis has been decades in the making*, LOS ANGELES TIMES (February 1, 2018), <https://www.latimes.com/local/lanow/la-me-homeless-how-we-got-here-20180201-story.html>.

⁸⁰ *9 Astonishing Numbers on The Bay Area Housing Crisis In 2018*, CBS NEWS (December 18, 2018), <https://sanfrancisco.cbslocal.com/2018/12/18/astonishing-numbers-2018-bay-area-housing-crisis/>.

⁸¹ THE STATE OF THE NATION'S HOUSING 2018, *supra* note 74, at 32.

⁸² LOS ANGELES HOMELESS SERVICES AUTHORITY, 2019 GREATER LOS ANGELES HOMELESS COUNT PRESENTATION, p. 4 (June 5, 2019), <https://www.lahsa.org/documents?id=3437-2019-greater-los-angeles-homeless-count-presentation.pdf>.

⁸³ A TOOL KIT TO CLOSE CALIFORNIA'S HOUSING GAP, *supra* note 65, at 3-4.

⁸⁴ THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS, *supra* note 79.

homeless families require much higher expenditures than individuals—in some cases amounting to over \$20,000 per family monthly.⁸⁵

F. California’s Housing Agencies and Their Interactions with HUD

California agencies administer programs that interact with HUD programs and will be impacted by the Proposed Rule.

1. California Department of Housing and Community Development

The California Department of Housing and Community Development (HCD) operates programs and provides services to promote housing in California.⁸⁶ It administers grants and funding to create and rehabilitate housing units, develops housing policy, enforces building standards, facilitates housing finance, and implements economic and community development programs.⁸⁷ HCD’s many roles revolve around its one core mission: to preserve and expand safe and affordable housing for all Californians.⁸⁸

HCD plays a critical role in planning for California’s future housing needs.⁸⁹ Based upon population projections and other demographic data, such as household income, HCD determines California’s housing needs for a 10-year period.⁹⁰ It then works with 539 regions throughout the State to determine local housing deficits and it reviews each city or county’s housing plan, known as a “housing element.”⁹¹ This housing element is the roadmap for housing development in a given community. In the housing element, each local jurisdiction analyzes its existing and projected housing needs

⁸⁵ U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF POL’Y DEV. & RESEARCH, COSTS ASSOCIATED WITH FIRST-TIME HOMELESSNESS FOR FAMILIES AND INDIVIDUALS (Mar. 2010), https://www.huduser.gov/publications/pdf/costs_homeless.pdf.

⁸⁶ Cal. Health & Safety Code § 50400 et seq.; *see also* CAL. DEP’T OF HOUS. & COMMUNITY DEV., ADDRESSING A VARIETY OF HOUSING CHALLENGES (last visited June 20, 2019) <http://www.hcd.ca.gov/policy-research/housing-challenges.shtml>.

⁸⁷ CAL. DEP’T OF HOUS. & COMMUNITY DEV., ANNUAL REPORT FOR THE FISCAL YEAR 2016-2017 p. 2 (accessed June 10, 2019), http://www.hcd.ca.gov/policy-research/plans-reports/docs/HCD_2016-17_Annual-Report_Final.pdf (hereinafter ANNUAL REPORT 2016-2017).

⁸⁸ *Id.*; *see also* Cal. Health & Safety Code § 50400.

⁸⁹ Cal. Gov’t. Code §§ 65580 et seq.; *see also* ANNUAL REPORT 2016-2017, *supra* note 89, at 2.

⁹⁰ Cal. Gov’t. Code § 65584; *see also* CALIFORNIA’S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES, FINAL STATEWIDE HOUSING ASSESSMENT 2025, *supra* note 73, at 5.

⁹¹ *Id.*

and identifies goals, policies, and financial resources to meet those needs.⁹² HCD regularly reviews housing elements to determine whether local entities are planning for their deficits.⁹³ HCD also reviews annual progress reports submitted by these jurisdictions and provides ongoing technical support.⁹⁴

HCD also currently oversees approximately 1,000 affordable housing developments in California, consisting of more than 59,500 units and more than \$2 billion of rental housing loans from 20 loan programs, including both State and federal funds.⁹⁵ HCD monitors these developments to ensure they remain compliant with federal requirements and intervenes when they do not.⁹⁶

While HCD does not directly administer Section 8 housing benefits to individuals, the agency funds, finances, and monitors projects that receive Section 8 and other federal housing subsidies.⁹⁷ HCD is responsible for ensuring that the housing developments in its portfolio meet the various requirements of federal funding, while also providing significant support and technical assistance to those applying for federal housing funding.⁹⁸ For example, during fiscal year 2016-2017, HCD team members conducted over 20 technical assistance workshops for various grants and funding programs.⁹⁹ HCD also publishes guidelines and resources for federal programs.¹⁰⁰ Consequently, in response to rule changes, HCD must respond to requests from local governments, homeowners, and a variety of other consumers on how to apply for and effectively manage these programs.¹⁰¹

2. California Housing Finance Agency (CalHFA)

The California Housing Finance Agency (CalHFA) is the State's affordable housing lender: it provides financing to low- to moderate-income Californians so they

⁹² Cal. Gov't. Code § 65583.

⁹³ Cal. Gov't. Code § 65585.

⁹⁴ See ANNUAL REPORT 2016-2017, *supra* note 89, at 35.

⁹⁵ *Id.* at 25; unpublished updated internal HCD data indicates that currently HCD oversees approximately 1,200 projects consisting of approximately 60,000 units with a value of over \$3 billion from over 20 loan programs.

⁹⁶ *Id.* at 25-26.

⁹⁷ See *id.* at 3.

⁹⁸ *Id.* at 24-25.

⁹⁹ *Id.* at 24.

¹⁰⁰ See, e.g., CAL. HOUS. & COMMUNITY DEV., COMMUNITY DEVELOPMENT BLOCK PROGRAM: GUIDELINES AND REGULATIONS (last visited June 26, 2019), https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs.

¹⁰¹ ANNUAL REPORT 2016-2017, *supra* note 89, at 4.

may have access to suitable housing.¹⁰² Historically, CalHFA provides assistance in three areas: (1) it partners with jurisdictions and developers to finance affordable multifamily rental housing; (2) it provides below-market interest rate mortgages and down payment assistance to first-time homebuyers; and (3) it insures single-family home purchase mortgages.¹⁰³

CalHFA also serves directly as a traditional contract administrator on behalf of HUD for Section 8 project-based rental assistance.¹⁰⁴ Currently, CalHFA oversees seventy-eight Section 8 projects throughout the State, which serve approximately 4,500 households.¹⁰⁵ Under this program, HUD and project owners enter into long-term housing assistance payment contracts,¹⁰⁶ usually for a 30-year term. As contract administrator, CalHFA serves as the conduit between the project owner and HUD: it ensures that project owners receive accurate subsidies from HUD, and, in turn, certifies that project owners comply with all of HUD's requirements.¹⁰⁷

Specifically, each month, CalHFA reviews the rents collected from the units, verifies they are calculated correctly, and submits the accounting to HUD.¹⁰⁸ HUD then pays CalHFA the subsidy for the remaining portion of the rent along with CalHFA's administrative fees.¹⁰⁹ Often, CalHFA also serves as mortgagee to the project owner; in that case, it may also withdraw any amount owed under the mortgage loan from the subsidy it passes along to the project owner. As part of this monthly process for each project, CalHFA processes the tenants' eligibility under the project-based rental assistance requirements.

As the contract administrator, not only does CalHFA facilitate disbursement of subsidies on behalf of HUD, it also channels information among the tenants, project

¹⁰² Cal. Health & Safety Code §§ 50950, 50952; Cal. Hous. Fin. Agency, About Us (last visited June 14, 2019), <https://www.calhfa.ca.gov/about/index.htm>.

¹⁰³ Cal. Hous. Fin. Agency, About Us (last visited June 26, 2019), <https://www.calhfa.ca.gov/about/index.htm>.

¹⁰⁴ Cal. Hous. Fin. Agency, *Asset Management Section 8 Contract Administration* (last visited June 26, 2019), <https://www.calhfa.ca.gov/multifamily/asset/section8/index.htm>.

¹⁰⁵ See Cal. Hous. Fin. Agency, *Map of CalHFA Apartments Sites* (last visited June 26, 2019), <https://calhfa.maps.arcgis.com/apps/webappviewer/index.html?id=97966a626284444281e3b28d0592d91c>.

¹⁰⁶ See, e.g., U.S. DEP'T OF HOUS. & URBAN DEV., GUIDEBOOK FOR SECTION 8 CONTRACT ADMINISTRATION INITIATIVES (March 15, 2001), https://www.hud.gov/sites/documents/GUIDEBK_CA_INIT.PDF [hereinafter GUIDEBOOK FOR SECTION 8 CONTRACT ADMINISTRATION INITIATIVE].

¹⁰⁷ See *id.*

¹⁰⁸ *Id.* at ch. 5.

¹⁰⁹ *Id.* at 11-5.

owners, and HUD.¹¹⁰ CalHFA ensures project owners comply with HUD guidelines. It conducts comprehensive annual on-site audits of projects.¹¹¹ It fields and responds to tenant claims.¹¹² These include any requests for information related to the payment of a specific voucher, such as tenant inquiries or complaints, as well as special claims, such as vacancy losses or unpaid tenant rent.¹¹³

CalHFA has the additional responsibility to prepare its contracts for any changes in HUD's regulations that could affect a project's compliance. It monitors proposed rulemakings and other documents published in the Federal Register by HUD as they relate to project-based rental assistance Section 8 programs.¹¹⁴ CalHFA notifies project owners of HUD's final regulations and drafts and issues a 60-day implementation notice. CalHFA then follows up and conducts an Annual Management & Occupancy Review to verify that project owners have complied with HUD's final rules. If a project owner does not comply, CalHFA must conduct supplemental follow up until the deficiency is addressed and closed.

3. California Department of Fair Employment and Housing (DFEH)

The California Department of Fair Employment and Housing (DFEH) is the state agency charged with enforcing California civil rights laws. These laws, including the Unruh Civil Rights Act and the Fair Employment and Housing Act (FEHA), protect and safeguard the right and opportunity of all persons to seek, obtain, and hold housing without discrimination.¹¹⁵

California's FEHA prohibits housing discrimination, including the refusal to rent, the denial or withholding of housing accommodations, and/or the cancellation or termination of a rental agreement, on the basis of, among other things, actual or perceived familial status, national origin, disability, and immigration/citizenship status.¹¹⁶ The FEHA further prohibits housing providers from inquiring about a prospective tenant's national origin or familial status and/or making statements that indicate any preference,

¹¹⁰ *See id.* at 8-1.

¹¹¹ *Id.* at 6-1, 8-1.

¹¹² *Id.*

¹¹³ *See, e.g.,* Cal. Hous. Fin. Agency, *Information Practices Act Request for Tenant Records* (last visited June 26, 2019), <https://www.calhfa.ca.gov/privacy/IPA-Request-Tenant-Records.pdf>.

¹¹⁴ *See, e.g.,* Cal. Hous. Fin. Agency, *HUD Tenant Rights laws and Protection: California* (last visited June 26, 2019), <https://www.calhfa.ca.gov/multifamily/asset/index.htm>.

¹¹⁵ Unruh Civil Rights Act, Cal. Civ. Code § 51; FEHA, Cal. Gov't Code § 12900, *et seq.*

¹¹⁶ Cal. Gov't Code § 12955(a),(c); Cal. Gov't Code § 12927(c)(1).

limitation, or discrimination based on national origin or familial status.¹¹⁷ Violation of the FEHA includes intentional discrimination, as well as discrimination that has a disparate impact on a protected class.¹¹⁸

The Unruh Act prohibits discrimination by any business establishment, including a public or private housing provider, based on a person's actual or perceived membership in a class that the FEHA protects, as well as a person's actual or perceived immigration or citizenship status. The FEHA and Unruh Act also prohibit discrimination based on an individual's association with a person who is or is perceived to be within a protected class.¹¹⁹ A violation of the Unruh Act is also a violation of the FEHA and the protected classes protected under the Unruh Act are incorporated into the FEHA.¹²⁰ The FEHA and Unruh Act apply to PHAs, private landlords, and businesses who rent or lease housing accommodations.¹²¹

DFEH may bring civil actions in the name of the DFEH and on behalf of groups, classes, and individuals who have been subjected to discriminatory practices that are unlawful under the Unruh Act or the FEHA.¹²² These antidiscrimination statutes in large part overlap (though are typically more extensive) with federal protections, such as those under the Fair Housing Act.¹²³

Like many other state civil rights agencies, DFEH has a workshare agreement with HUD for the investigation of housing discrimination complaints. If a complaint has been filed with HUD, it is usually filed with DFEH as well. In most cases, HUD will send the complaint to DFEH for investigation. If a complaint is filed with DFEH and alleges facts that would violate the federal Fair Housing Act, the complaint may also be filed with HUD, although DFEH will still investigate.

G. Local Agencies' Interactions with HUD

Local agencies also administer programs that interact with HUD programs and will be impacted by the Proposed Rule.

¹¹⁷ Cal. Gov't Code §§ 12955(b),(c).

¹¹⁸ Cal. Gov't Code § 12955.8(b); *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th 1386, 1419 (2007) (“[FEHA] plainly authorizes a claim for housing discrimination irrespective of intent, where the alleged act or omission has the effect of discriminating on the basis of [a protected characteristic].”).

¹¹⁹ Cal. Civ. Code §§ 51(b),(h),(e)(6).

¹²⁰ Cal. Gov't Code § 12955(d); Cal. Gov't Code § 12948.

¹²¹ Cal. Gov't Code § 12927(e); Cal. Civ. Code § 51(b); *see also Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721, 731 (1982).

¹²² Cal. Gov't Code § 12965(a).

¹²³ 42 U.S.C. § 3601, *et seq.* (2008).

1. Public Housing Authorities' Role Administering HUD Programs

There are 113 public housing authorities (PHAs) in California that serve as local administrative agencies for housing assistance programs funded by HUD.¹²⁴ In 2018 alone, HUD provided Californians with \$5.8 billion in rental assistance to support over 526,000 households through PHAs.¹²⁵ Generally, PHAs select the tenants who will receive rental assistance, determine families' monthly rent contributions in accordance with federal rules, and manage program waiting lists.¹²⁶

Three major HUD programs administered by PHAs—HCV, Project-Based Rental Assistance (PBRA), and Public Housing—assist over 80% of California households that receive federal rental assistance.¹²⁷ The HCV Program assists 301,100 California families by providing them with subsidies to rent private apartments.¹²⁸ PBRA supports over 98,000 households in California.¹²⁹ PBRA assistance allows eligible families to rent units in particular properties owned by private owners who have agreements with HUD or PHAs.¹³⁰ PHAs can administer PBRA through project-based vouchers, or private owners can contract with HUD without PHA involvement.¹³¹ Under either HCV or PBRA, eligible tenants pay 30% of their income, or a minimum of \$25 to \$50 per month, and HUD funds fill the gap between the tenants' contribution and the amount owed the housing provider.¹³² PBRA particularly helps house seniors and people with disabilities:

¹²⁴ Affordable Housing Online Section 8 Waiting Lists, <https://affordablehousingonline.com/open-section-8-waiting-lists/California> (last visited June 7, 2019).

¹²⁵ POLICY BASICS: FEDERAL RENTAL ASSISTANCE, *supra* note 34.

¹²⁶ *Id.*

¹²⁷ *See id.*; *see also* CTR. ON BUDGET POL'Y PRIORITIES, *Policy Basics: Section 8 Project-Based Rental Assistance*, November 15, 2017, <https://www.cbpp.org/research/housing/policy-basics-section-8-project-based-rental-assistance?fa=view&id=3891>.

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ CTR. ON BUDGET POL'Y PRIORITIES, *Policy Basics: Section 8 Project-Based Rental Assistance*, November 15, 2017, <https://www.cbpp.org/research/housing/policy-basics-section-8-project-based-rental-assistance?fa=view&id=3891>.

¹³¹ *See* National Housing Law Project, *Understanding Project-Based Rental Assistance*, March 22, 2018, at 4-6, <https://www.nhlp.org/wp-content/uploads/2018/03/Saving-HUD-Homes-2-FINAL.pdf>.

¹³² *See* CTR. ON BUDGET POL'Y PRIORITIES, *Policy Basics: Section 8 Project-Based Rental Assistance*, *supra* note 129; *see also* CTR. ON BUDGET POL'Y PRIORITIES, POLICY BASICS: HOUSING CHOICE VOUCHER PROGRAM, May 3, 2017, <https://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher->

Nationally, two-thirds of PBRA households are headed by such individuals.¹³³ Finally, public housing developments assist 27,300 households in California by providing affordable housing.¹³⁴

In order to determine eligibility and the amount of the housing assistance payment under Section 8 programs, a PHA collects information on family income, assets, and family composition, then verifies this information with other local agencies, applicant employers, and banks.¹³⁵ To be eligible for Section 8 programs, a household's total income must not exceed geographic area income limits according to family size that HUD sets annually.¹³⁶ For extremely low-income families, the limit is 30% of area median income or the federal poverty level, whichever is higher; for very low-income families, the limit is 50% of area median income; and for low-income families, the limit is 80% of area median income.¹³⁷ If a PHA determines that a family is eligible but is unable to assist them immediately, it will put the household on a waiting list. Demand for Section 8 assistance in California is extremely high, particularly in larger cities, and wait times can often be years. In Los Angeles, for instance, the Housing Authority of the City of Los Angeles closed its waiting list for HCV assistance in 2017, and it is not currently accepting applications.¹³⁸

As one of the largest PHAs in the nation, the Housing Authority of the City of Los Angeles pays more than \$465 million to property owners per year on behalf of over 45,000 families participating in HCV, PBRA and PBV programs,¹³⁹ and manages

[program?fa=view&id=279.https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet.](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet)

¹³³ *Id.*

¹³⁴ See CTR. ON BUDGET POL'Y PRIORITIES, POLICY BASICS: PUBLIC HOUSING, Nov. 15, 2017, <https://www.cbpp.org/research/policy-basics-public-housing>.

¹³⁵ See U.S. Dep't of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet*,

https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited June 7, 2019).

¹³⁶ Cal. Dep't of Hous. & Community Dev., *State Income Limits for 2018* (Apr. 26, 2018), <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>.

¹³⁷ See *id.* In California, the geographic area income limits for extremely low, very low, and low-income families vary widely. For example, in 2018 the income limit for an extremely low-income family of four in Fresno County was \$25,100, while in Alameda County the income limit was \$34,850 for an extremely low-income family of the same size.

¹³⁸ Affordable Housing Online Section 8 Waiting Lists, *supra* note 126.

¹³⁹ Housing Authority of the City of Los Angeles, About Section 8, <http://www.hacla.org/abouts8> (last visited June 7, 2019).

fourteen public housing developments with more than 6,500 very low-income families.¹⁴⁰ Nearly one in three of the housing authority's residents in public housing live in mixed-eligibility families, the majority of whom are children who are U.S. citizens.¹⁴¹ As another example, the Fresno Housing Authority assists over 18,000 households,¹⁴² including 570 mixed-eligibility status families.¹⁴³ Up to 1,402 children and a total of 2,606 people in Fresno would face eviction from federal housing if the Proposed Rule is enacted.¹⁴⁴ Additionally, private owners administering PBRA without PHAs would each bear the burden of additional document collection, verification, and evictions under the Proposed Rule.

2. Cities and Counties' Role in Providing Housing-Related Services

Cities and counties in California also work with PHAs to provide housing services, including emergency, permanent, and supportive housing for families and individuals experiencing homelessness. Cities, counties, and other local and regional entities administer Continuum of Care Homeless Assistance Programs (CoCs) funded by HUD. These programs assist homeless families and individuals including those with serious mental illness, chronic drug and alcohol problems, and HIV/AIDS.¹⁴⁵ CoCs are local planning bodies that can consist of multiple cities and counties in a particular region to encourage coordination of housing and service providers for homeless people. In 2018, 43 city and county organizations in California administered over \$415 million in CoC program funds, supporting over 900 housing projects.¹⁴⁶

¹⁴⁰ Housing Authority of the City of Los Angeles, About Public Housing, <http://www.hacla.org/aboutpublichousing> (last visited June 7, 2019).

¹⁴¹ Press Release, Nanette Diaz Barragan, Rep. Barragán, LA Members Urge HUD to Withdraw Plan to End Public Housing for Undocumented Immigrants (May 15, 1995), available at <https://barragan.house.gov/rep-barragan-la-members-urge-hud-to-withdraw-plan-to-end-public-housing-for-undocumented-immigrants/>.

¹⁴² Fresno Housing Authority Programs, <http://fresnohousing.org/about/programs-2/> (last visited June 7, 2019).

¹⁴³ Yesenia Amaro, *Fresno mayor, housing authority poised to oppose HUD plan targeting undocumented*, May 30, 2019, <https://www.fresnobee.com/news/local/article230902794.html>.

¹⁴⁴ *Id.*

¹⁴⁵ See U.S. Dep't of Hous. & Urban Dev. S+C Eligibility Requirements, <https://www.hudexchange.info/programs/spc/spc-eligibility-requirements/> (last visited June 10, 2019).

¹⁴⁶ U.S. Dep't of Hous. and Urban Dev., *Fiscal Year 2018 Continuum of Care Competition Homeless Assistance Award Report*, Feb. 5, 2019, <https://www.hudexchange.info/onecpd/assets/File/2018-california-coc-grants.pdf>

Additionally, California counties administer the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, which is a public assistance program that provides cash aid and services to eligible, needy families often due to absence, disability, or death of either parent; the principal earner is unemployed; or a caretaker relative is fostering the children.¹⁴⁷ In the 2017-2018 fiscal year, over \$54 million in CalWORKs Homeless Assistance funds supported temporary shelters and permanent housing for 63,890 families throughout the State.¹⁴⁸

CoCs throughout California also partner with local nonprofit organizations and other agencies to provide housing services. For example, the Los Angeles Homeless Services Authority, a partnership between the City and County of Los Angeles, works with over 100 nonprofits and local agencies to provide programs ranging from outreach, access centers, emergency shelters, safe havens, transitional and permanent housing, and other services designed to provide a stable housing environment.¹⁴⁹ In the City and County of San Francisco, the Department of Homelessness and Supportive Housing combines programs and contracts from the local Department of Public Health, the Human Services Agency, the Department of Children, Youth and Their Families, and the Mayor's Office of Housing and Community Development to create a consolidated department focused on preventing and ending homelessness.¹⁵⁰

CoCs conduct at least annual counts of sheltered and unsheltered people experiencing homelessness.¹⁵¹ The Los Angeles Homeless Services Authority coordinates the largest homelessness census count in the nation. On a single night in 2019, nearly 60,000 people in Los Angeles County were experiencing homelessness, a

¹⁴⁷ Cal. Dep't of Social Servs.: Cal. Work Opportunity and Responsibility to Kids (CalWORKs), <https://www.cdss.ca.gov/CalWORKS> (last visited June 10, 2019).

¹⁴⁸ CAL. DEP'T OF SOCIAL SERVS., CALWORKS ANNUAL SUMMARY (2019) at 122, <http://www.cdss.ca.gov/Portals/9/Leg/2019CalWORKsAnnualSummary-14March2019.pdf?ver=2019-03-21-101902-790>.

¹⁴⁹ CAL. DEP'T OF SOCIAL SERVS., CALWORKS HOMELESS ASSISTANCE PROGRAM MONTHLY STATISTICAL REPORT (2019), <http://www.cdss.ca.gov/inforesources/Research-and-Data/CalWORKs-Data-Tables/CA-237-HA> (then follow "Fiscal Year 2017-2018" hyperlink).

¹⁵⁰ See San Francisco Dep't of Homelessness and Supportive Hous. About Page, <http://hsh.sfgov.org/> (last visited June 10, 2019).

¹⁵¹ See U.S. Dep't of Hous. and Urban Dev. Homelessness Data Exchange, <https://hudhdx.info/#hic> (last visited June 10, 2019).

12% rise from the count in 2018.¹⁵² The City of Los Angeles saw a 16% rise.¹⁵³ In spite of an aggressive increase in efforts to end homelessness, including passage of a \$1.2 billion bond in 2016 to provide emergency shelter, rapid rehousing, and other assistance,¹⁵⁴ the region's affordable housing crisis drove thousands more into homelessness. The count revealed that 23% of unsheltered people in 2019 were homeless for the first time, with over half citing economic hardship as the cause.¹⁵⁵

In the Bay Area counties of San Francisco, Alameda, and Santa Clara, a total of more than 25,000 people were counted as homeless during a single survey in 2019.¹⁵⁶ Since 2017, the homeless population increased by 17% in San Francisco, 31% in Santa Clara County, and 43% in Alameda County.¹⁵⁷ Similar to Los Angeles, the increase in homelessness is driven in part by an affordable housing crisis. In San Francisco, for instance, the median price of a two-bedroom home is \$1.3 million and a family of four earning \$117,400 a year is considered low income according to HUD geographic area limits.¹⁵⁸

III. THE PROPOSED RULE IS CONTRARY TO LAW

A. The Proposed Rule Is Arbitrary and Capricious Under the Administrative Procedure Act (APA)

HUD has no reasoned explanation for the Proposed Rule, did not undergo a thoughtful analysis of its impacts, and did not adequately consider alternatives. Under the APA, courts must “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not

¹⁵² Los Angeles Homeless Services Authority, *Greater Los Angeles Homeless Count Shows 12% Rise in Homelessness* (June 4, 2019), <https://www.lahsa.org/news?article=558-greater-los-angeles-homeless-count-shows-12-rise-in-homelessness> (hereinafter *Greater Los Angeles Homeless Count Shows 12% Rise in Homelessness*).

¹⁵³ *Id.*

¹⁵⁴ Elijah Chiland, *Measure HHH: Angelenos OK \$1.2 billion bond to tackle homelessness*, Nov. 9, 2016, LA CURBED, <https://la.curbed.com/2016/11/9/13574446/homelessness-ballot-measure-hhh-housing-bond-pass>.

¹⁵⁵ *Greater Los Angeles Homeless Count Shows 12% Rise in Homelessness*, *supra* note 154.

¹⁵⁶ Len Ramirez, *Homeless Population Surges Across San Francisco Bay Area*, CBS SAN FRANCISCO, May 16, 2019, <https://sanfrancisco.cbslocal.com/2019/05/16/homeless-population-surges-across-san-francisco-bay-area/>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

in accordance with law.”¹⁵⁹ Agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”¹⁶⁰ When an agency reverses course by changing a prior policy, the agency must provide a “reasoned explanation,” and show that “the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.”¹⁶¹

1. HUD Has No Reasoned Explanation for its Rule Change

There is no reasonable basis for these changes in HUD policy. HUD offers its Proposed Rule as a solution to a non-existent problem, HUD’s purported reasons for the Proposed Rule changes do not withstand scrutiny, and the rule’s consequences run counter to HUD’s mission.

a. HUD Already Prorates to Account for Ineligible Individuals

To the extent HUD claims that its rule is aimed at eliminating HUD benefits for ineligible persons in mixed-eligibility families, HUD already has a solution to that problem—it does not pay those ineligible individuals any subsidies. Instead, HUD prorates the subsidy to account only for eligible family members.¹⁶² In fact, HUD often benefits from ineligible members, as they usually increase a family’s income, resulting in HUD providing fewer financial subsidies to mixed-eligibility families (in addition to proration).¹⁶³ The Housing Authority of the City of Los Angeles alone expects to need an additional \$9.3 million to maintain existing levels of assistance to families due to lost revenue from mixed-eligibility families.¹⁶⁴ Indeed, HUD estimates that it would need approximately \$193 million to \$227 million annually to offset the costs of replacing mixed-eligibility households’ higher income.¹⁶⁵ Thus, mixed-eligibility families ultimately result in HUD saving millions of dollars annually that it can use to assist more families.

¹⁵⁹ 5 U.S.C. § 706(2)(A) (2000).

¹⁶⁰ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁶¹ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

¹⁶² See 24 C.F.R. § 5.520.

¹⁶³ See RIA, *supra* note 1, at 3.

¹⁶⁴ The Housing Authority of the City of Los Angeles Proposed Rule Comment Letter at 8, Docket No. FR-6124-P-01, July 3, 2019.

¹⁶⁵ RIA, *supra* note 1, at 3.

b. There is No New Information for HUD to Change its Rule

HUD's original regulations implementing Section 214 were promulgated by a final rule published on March 20, 1995.¹⁶⁶ The regulations require that financial assistance made available to a mixed-eligibility family be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.¹⁶⁷

HUD now claims that its Proposed Rule foreclosing eligibility to mixed-eligibility families better aligns with Section 214. However, in 1995 HUD was presented with the same question of statutory interpretation and promulgated rules including proration for mixed-eligibility families. No new facts warrant reconsideration. HUD claims that when Section 214 was enacted, verification was a "paper-driven process" whereas SAVE is instantaneous.¹⁶⁸ However, the 1995 HUD rule already used the SAVE system in certain instances, and yet kept the proration system.¹⁶⁹ And HUD already considered effectively ending proration. During the 1995 final rulemaking process, HUD responded to comments arguing that "ineligible persons should not be allowed to reside in an assisted unit." HUD disagreed: "The 'preservation of family' provisions flow directly from the statute. Section 214(c) provides for continued assistance and temporary deferral of termination of assistance for mixed-eligibility families."¹⁷⁰ HUD had contemplated disallowing proration based on the same facts as today. Thus, there is no reasoned basis for this administration's change in policy.

c. The Proposed Rule Runs Counter to HUD's Affordable Housing Mission

The mission of HUD is to create strong, sustainable, inclusive communities and quality affordable homes for all.¹⁷¹ As explained above, the Proposed Rule will cost HUD up to \$227 million annually by eliminating the income of ineligible individuals in its subsidy calculation.¹⁷² As a result of that financial shortfall, "HUD would have to

¹⁶⁶ Restrictions on Assistance to Nonresidents, 60 Fed. Reg. 14,816 (Mar. 20, 1995).

¹⁶⁷ 24 C.F.R. § 5.516(a)(1)(iii)(2010).

¹⁶⁸ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2.

¹⁶⁹ *See* Restrictions on Assistance to Nonresidents, 60 Fed. Reg. 14,820, 14,827 (Mar. 20, 1995); *see also* 24 C.F.R. § 5.512(c) (1999) (requiring PHAs to use the SAVE system when verifying the immigration status of noncitizen applicants).

¹⁷⁰ *See* Restrictions on Assistance to Nonresidents, 60 Fed. Reg. 14,820, 14,821 (Mar. 20, 1995).

¹⁷¹ HUD Mission Statement, <https://www.hud.gov/about/mission> (last visited June 21, 2019).

¹⁷² RIA, *supra* note 1, at 3.

reduce the quantity and quality of assisted housing.”¹⁷³ Thus, the Proposed Rule reduces the number of eligible individuals HUD can help, and leaves remaining eligible individuals in worse housing.

Secretary Carson stated that HUD has promulgated the Proposed Rule in an effort to address the waitlist crisis for subsidized housing faced by most PHAs nationwide.¹⁷⁴ But, as noted above, HUD acknowledges that the Proposed Rule will result in a decrease of HUD assisted housing. The Housing Authority of the City of Los Angeles alone estimates the Proposed Rule will force it to reduce the number of available Section 8 vouchers in Los Angeles by at least 300.¹⁷⁵ Furthermore, there are 25,000 mixed-eligibility households nationally that may face eviction under the Proposed Rule.¹⁷⁶ However, there are 3 million individuals on voucher waitlists around the country, with an additional 6 million that would like to be on these waitlists.¹⁷⁷ The Proposed Rule does not address the shortfall. In fact, the White House proposed 2020 budget compounds the problem, requesting an \$8.7 billion (16.4%) decrease from HUD’s 2019 budget.¹⁷⁸

Perhaps most importantly, a direct result of the rule is that eligible recipients—including those who will not or cannot live without their ineligible family member—will be denied assistance and be forced out of housing. These individuals would potentially end up homeless, and thus the rule would result in the antithesis of providing affordable housing.

2. HUD Failed to Develop Facts, Ascertain Costs, and Analyze Effects of the Rule

Executive Orders 12866 and 13563 require agencies to “assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

¹⁷³ *Id.*

¹⁷⁴ Tracy Jan, *Trump Proposal Would Evict Undocumented Immigrants From Public Housing*, WASH. POST (Apr. 18, 2019), https://www.washingtonpost.com/business/2019/04/18/trump-proposal-would-evict-undocumented-immigrants-public-housing/?utm_term=.f68fec836d53.

¹⁷⁵ The Housing Authority of the City of Los Angeles Proposed Rule Comment Letter, *supra* note 166, at 6.

¹⁷⁶ RIA, *supra* note 1, at 7.

¹⁷⁷ See Alicia Mazzara, CBPP, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Means Long Waits*, CTR. ON BUDGET & POLICY PRIORITIES, Apr. 19, 2017, <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits>.

¹⁷⁸ Office of Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2020 57 (2019).

regulatory approaches that maximize net benefits.”¹⁷⁹ In violation of the APA and these executive orders, HUD’s Proposed Rule fails to assess the costs and benefits that would allow for reasoned decision-making.

a. HUD Failed to Analyze the Impact on PHAs in “Moving to Work” Jurisdictions

One of the most obviously flawed inadequacies of HUD’s analysis is its failure to assess the impact of the rule on dozens of PHAs that provide services to millions of Americans. In assessing costs, the RIA states “it is uncertain how the regulation would impact housing authorities in the Moving to Work demonstration program, since most HUD regulations are waived for program participants.”¹⁸⁰ Moving to Work is a HUD demonstration program that exempts PHAs from many public housing and voucher rules to allow greater flexibility in pursuing innovative housing options.¹⁸¹ If HUD has not determined the consequences of this policy change to its own programs, it cannot have considered any tradeoffs or weighed costs and benefits. A number of large California jurisdictions are part of Moving to Work, including Oakland, Santa Clara County, San Mateo County, San Bernardino County, and the City of San Diego.¹⁸² HUD plans to expand its MTW program from 39 PHAs currently to “100 PHAs by 2022.”¹⁸³

b. HUD Failed to Analyze the Impact on Homelessness

Similarly, HUD fails to calculate the inevitable costs of the Proposed Rule attributable to an increase of homelessness. HUD identifies the fact that “temporary homelessness could arise for a household, if they are unable to find alternative housing,” estimating that “the costs associated with homelessness could range from \$20,000 to \$50,000 per person per year.”¹⁸⁴ However, HUD provides no estimate of the number of individuals that the rule would force into homelessness, thus failing to provide an estimate of the overall homelessness-related costs of the rule. These are likely

¹⁷⁹ Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993); Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

¹⁸⁰ RIA, *supra* note 1, at 17.

¹⁸¹ HUD Moving to Work Demonstration Program, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw (last visited June 9, 2019); *see also* HUD Moving to Work Expansion, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/expansion (last visited June 9, 2019).

¹⁸² HUD Moving to Work Sites, https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/mtwsites (last visited June 10, 2019). Other large cities, including Seattle, San Antonio, Washington, D.C., Baltimore, Atlanta, and Chicago, are also MTW jurisdictions.

¹⁸³ HUD Moving to Work Demonstration Program, *supra* note 183.

¹⁸⁴ RIA, *supra* note 1, at 16.

significant; at the high end of HUD's annual per capita cost estimate range, if 2,000 individuals (under 2% of the total number of individuals estimated to be impacted by the rule) are forced into homelessness for one year, that would represent a \$100 million cost to society. At 10,000 individuals (under 10%), that number balloons to \$500 million. Having failed to generate such an estimate on the rule's bottom-line impact on homelessness-related costs, HUD's evaluation of the effect of the rule is insufficient.

c. HUD Failed to Analyze Increased Harms to Vulnerable Individuals

While HUD estimates the cost of a move in terms of labor-hours and a rental truck, it fails to address any attendant costs of moving. Even leaving aside the severe harms of homelessness, housing instability caused by a forced move might entail a loss of a job or longer commute,¹⁸⁵ switching schools for children,¹⁸⁶ and finding and enrolling in hospitals, daycare, utilities, and other services in a new area. HUD has not considered these costs.

Housing instability is also linked to a number of adverse health incomes, including depression, alcohol abuse,¹⁸⁷ and even suicide.¹⁸⁸ And a number of employment-related consequences can follow from forced moves, including increased tardiness, absenteeism and mistakes on the job, impairing the job performance of low-wage workers already staffing precarious positions with little security or protections.¹⁸⁹

HUD has failed to take into account the increased burden that costs such as these will have for individuals with disabilities and chronic health conditions. Further, moving carries additional burdens and potential health consequences for elders with dementia and

¹⁸⁵ See National Coalition for the Homeless, *Employment and Homelessness Fact Sheet*, July 2009, <http://nationalhomeless.org/wp-content/uploads/2014/06/Employment-Fact-Sheet.pdf>.

¹⁸⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, K-12 EDUCATION: MANY CHALLENGES ARISE IN EDUCATING STUDENTS WHO CHANGE SCHOOLS FREQUENTLY (Nov. 2010), <https://www.gao.gov/products/GAO-11-40> (showing that students who are forced to change schools have lower academic performance and increased drop-out rates).

¹⁸⁷ National Poverty Center, Univ. of Michigan, *Poverty Solutions*, http://www.npc.umich.edu/publications/policy_briefs/brief29/NPC%20Policy%20Brief%20-%2029.pdf (last visited June 26, 2019).

¹⁸⁸ Fowler, K.A. et al., *Increase in suicides associated with home eviction and foreclosure during the US housing crisis: Findings from 16 National Violent Death Reporting System States, 2005–2010*, AMERICAN JOURNAL OF PUBLIC HEALTH (2015).

¹⁸⁹ Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor* at 14, Jan. 11, 2016, https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson_sp2016.pdf?m=1452638824.

others with cognitive impairments. A forced move can cause such individuals “transfer trauma,” causing myriad harmful emotional, behavioral and physiological symptoms.¹⁹⁰

d. HUD Failed to Develop Costs to PHAs and Landlords

HUD discusses the costs of eviction to itself, but ignores the costs to housing providers.¹⁹¹ One analysis of over 12,000 evictions in California showed “hard” average eviction costs of almost \$1,100 per unit in the form of legal and associated fees.¹⁹²

A number of other costs will also be imposed on PHAs and landlords. For example, PHAs at a minimum will have to revise their websites and other informational materials, respond to inquiries about eligibility, and retrain staff, and will likely have some costs associated with checking the status of household members and conducting SAVE checks. Owners with PBRA contracts and landlords accepting vouchers may face the same or similar costs. These additional burdens on landlords, such as collecting immigration status documents and verifying prospective tenants’ status, may drive some landlords out of the Section 8 program, which will reduce affordable housing availability more generally. Indeed, many landlords are already reluctant to take part in the Section 8 program because of perceived administrative burdens.¹⁹³

While the Proposed Rule contemplates the cost of evictions, it does not calculate turnover costs from evictions and “voluntary” move-outs as a result of rule implementation. PHAs and landlords will have to rehabilitate and advertise vacated units, incur revenue losses due to lost rent during time the unit is vacant between tenants, and conduct background checks and process paperwork for new tenants. They will also

¹⁹⁰ Kate Jackson, *Prevent Elder Transfer Trauma: Tips to Ease Relocation Stress*, SOCIAL WORK TODAY, Jan.–Feb. 2015, at 10, <https://www.socialworktoday.com/archive/011915p10.shtml>, (stating symptoms can include depression and anxiety; combativeness, screaming, wandering, and withdrawal; refusal of care and medications; confusion, pain, falling, rapid heartbeat from anxiety, irritable bowel syndrome, indigestion, or nausea; sleeplessness, poor appetite, weight loss or gain, self-medication through drug, alcohol, and tobacco use).

¹⁹¹ RIA, *supra* note 1, at 15.

¹⁹² Unpublished updated internal HCD data indicates that this is a conservative estimate, as it does not account for higher costs in urban areas, nor the generally higher eviction costs for subsidized units due to tenants’ tendency to fight harder in court and receive legal representation to preserve such housing, driving up attorney fees for landlords.

¹⁹³ Mattie Quinn, ‘Section 8 Need Not Apply’: States and Cities Outlaw Housing Discrimination, GOVERNING, Aug. 29, 2018, <https://www.governing.com/topics/health-human-services/gov-section-8-housing-discrimination-income-source.html>.

assume the risk of exchanging possibly longtime and reliable tenants for hitherto unknown individuals.

The costs calculated by the Housing Authority of the City of Los Angeles are illustrative of the significant costs that many PHAs will face. These include lost rent, eviction costs, verification costs, re-leasing, and boarding up vacant units, and may exceed \$49 million. For Section 8, the Authority faces increased costs for informal hearings, lost administrative fees, and eligibility determinations of up to \$2.3 million.¹⁹⁴

Finally, the Proposed Rule requires PHAs to violate the Housing and Community Development Act, which prohibits discrimination on the basis of national origin.¹⁹⁵ PHAs must also certify their compliance with civil rights laws including the Fair Housing Act, as well as take actions within their framework to affirmatively further fair housing.¹⁹⁶ As described below, the Proposed Rule violates civil rights laws, making it impossible for any PHA to submit these certifications.

e. HUD Failed to Analyze How its Proposed Rule Affects Families

Federal departments and agencies are required to determine whether a proposed policy or regulation could affect family well-being.¹⁹⁷ In relevant part, agencies must assess whether the proposed regulatory action: (1) impacts the stability or safety of the family; (2) helps the family perform its functions; and (3) affects disposable income or poverty of families and children. If the regulatory action does financially impact families, the agency must determine whether that impact is justified and prepare an impact assessment to address criteria specified in the law.

Family separations undermine family stability, and lead to toxic stress, trauma, and attachment issues in children. Even a temporary separation has an enormous negative impact on the health and educational attainment of affected children later in life, and many parents struggle to restore the parent-child bond once it has been disrupted by a separation.¹⁹⁸ Because 70% of mixed-eligibility families currently receiving HUD assistance are composed of eligible children and at least one ineligible parent, it is likely

¹⁹⁴ The Housing Authority of the City of Los Angeles Proposed Rule Comment Letter, *supra* note 166, at 5.

¹⁹⁵ 42 U.S.C. § 5309(a) (2006).

¹⁹⁶ 42 U.S.C. § 1437c-1(d)(16) (2008).

¹⁹⁷ Treasury and General Government Appropriations Act of 1999, Pub. L. No. 105-277, sec. 654, 112 Stat. 2681 (1998).

¹⁹⁸ Laura C. N. Wood, *Impact of Punitive Immigr. Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, 2 *BMJ PAEDIATRICS OPEN* (2018),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6173255/>.

that these families will forgo the subsidies to avoid separation. In fact, HUD is banking on this, noting in their regulatory impact analysis that “HUD expects that fear of the family being separated would lead to prompt evacuation by most mixed-eligibility households, whether that fear is justified.”¹⁹⁹ Therefore, this rule would effectively evict as many as 108,000 individuals in mixed-eligibility families (in which nearly 3 out of 4 are eligible for assistance) from public housing, Section 8, and other programs covered by the Proposed Rule.²⁰⁰ These mass evictions and departures from housing assistance will cause increased rates of homelessness and unstable housing among an already vulnerable population.²⁰¹

Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits and loss of employment, are associated with increased likelihood of mental health problems in children,²⁰² and can dramatically increase the risk of an acute episode of a behavioral health condition, including relapse of addiction in adults. Having safe and stable housing is crucial to a person’s good health, sustaining employment, and overall self-sufficiency. These effects will be particularly prominent in the children, nearly all of whom are U.S. citizens, in these mixed-eligibility families. Research has shown that economic and housing instability impedes children’s cognitive development, leading to poorer life outcomes as adults.²⁰³ Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students’ high suspension rates, school turnover, truancy, and expulsions, limiting students’ opportunity to obtain the education they need to succeed later in life.²⁰⁴

¹⁹⁹ RIA, *supra* note 1, at 7.

²⁰⁰ *Id.* at 8.

²⁰¹ PRATT CTR. FOR CMTY. DEV., CONFRONTING THE HOUS. SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT N.Y. CAN DO (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

²⁰² See Will Fischer, *Research Shows Hous. Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR. ON BUDGET AND POLICY PRIORITIES (Oct. 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children’s Defense Fund* (Jan. 2015), <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

²⁰³ HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEV.: A RESEARCH SYNTHESIS, 2013, *available at* <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

²⁰⁴ See Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the D.C. Shelters and the Factors that Influence their Educ.*

f. HUD Failed to Assess Harms to Legal Residents and Eligible Individuals

HUD's Proposed Rule will affect residents with legal immigration status and otherwise eligible citizens. The Proposed Rule will deny HUD subsidies to mixed-eligibility families with certain legal resident members. If a family household member is a holder of a work visa, student visa, U-visa (crime victim), or persons with Temporary Protected Status, the entire family will lose HUD subsidies. HUD has provided no analysis on the number of individuals and families with legal residents affected.

Additionally, HUD has provided no analysis of the impact on eligible individuals. HUD has not calculated the number of currently eligible individuals who will fail to meet the new identification requirements. The Proposed Rule would require that the 9.5 million eligible persons currently receiving HUD assistance provide proof of citizenship or eligible status instead of a declaration signed under penalty of perjury as currently required. This practice has proven to be burdensome, costly, and unnecessary to protect program integrity in the Medicaid context, and will result in HUD terminating benefits to eligible individuals.²⁰⁵

Accessing citizenship documentation can be especially difficult for certain sectors of the population, particularly citizens with low income, elderly citizens, citizens of color, and citizens with disabilities. For instance, citizens earning less than \$35,000 per year are more than twice as likely to lack their own copies of citizenship documentation as those earning more than \$35,000.²⁰⁶ 25% of adult African-Americans citizens have no current government-issued photo identification, compared to 8% of white adult citizens. Almost 1 in 5 American citizens aged 65 and older lack current, unexpired government-issued photo identification.²⁰⁷ For these segments of the population, the scope of the harm balloons significantly.

55 (Mar. 2014) (Ph.D. dissertation, Howard University), *available at* <http://gradworks.umi.com/3639463.pdf> (citations omitted).

²⁰⁵ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2; Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement is Taking a Toll: States Report Enrollment Is Down and Admin. Costs Are Up*, CTR. ON BUDGET POL'Y PRIORITIES (Mar. 13, 2007), <https://www.cbpp.org/research/new-medicaid-citizenship-documentation-requirement-is-taking-a-toll-states-report>.

²⁰⁶ *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at NYU School of Law (Nov. 2006), https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf (hereinafter *Citizens Without Proof*).

²⁰⁷ *Id.*

The fall in Medicaid enrollment after Medicaid’s citizenship documentation requirements went into effect demonstrates the severity of this potential impact, and further demonstrates HUD’s failure to analyze these impacts. After Medicaid implemented a citizenship documentation requirement, enrollment in Medicaid enrollment sharply declined.²⁰⁸ Half of the 44 states responding to a Government Accountability Office survey indicated that Medicaid enrollment fell because of the citizenship documentation requirement.²⁰⁹ The survey also found that states reported increased administrative costs. California in particular would need to spend more time and resources providing documentation-related help to applicants and beneficiaries, increasing State agencies’ time spent on applications and redeterminations of eligibility.²¹⁰

Eligible individuals may also lose housing because of a “chilling effect” and because of discrimination. The Proposed Rule’s chilling effect will cause a number of current beneficiaries and potentially eligible individuals to forgo those benefits due to fear of adverse consequences, despite the fact that the rule does not actually apply to them. Furthermore, some landlords—and potentially the PHAs that administer benefits—may discriminate against applicants whom they perceive to be ineligible immigrants once the rule is in effect.

g. HUD Failed to Analyze Federalism and Small Entity Impacts

As the Proposed Rule acknowledges, Executive Order 13132 establishes certain requirements that a federal agency must meet when it promulgates a rule that has substantial direct effects on the states, imposes substantial direct compliance costs on state and local governments, or has other federalism implications. HUD summarily concludes that the Proposed Rule “does not have federalism implications and does not impose substantial direct compliance costs on State and local governments.”²¹¹ As is demonstrated throughout this letter, this conclusion is erroneous. The Proposed Rule will significantly undermine California’s policies and programs and will impose substantial costs on State and local governments.

Similarly, under the Regulatory Flexibility Act, whenever a federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare,

²⁰⁸ *Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, United States Government Accountability Office (June 2007), <https://www.gao.gov/new.items/d07889.pdf>.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2.

and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions).²¹² Here, HUD certified that the rule will not have a significant economic impact on small entities, despite the many small businesses, non-profits, and local governments that will be impacted, as documented throughout this letter.²¹³ By failing to properly and adequately analyze these federalism and small entity impacts, the Proposed Rule violates the APA.²¹⁴

h. HUD Failed to Consider Costs to California Agencies and Programs

Furthermore, HUD has failed to consider the Proposed Rule's numerous costs to California agencies and programs.

(1) Department of Housing and Community Development

The Proposed Rule will undermine HCD's significant gains in affordable housing and create additional, unreasonable administrative and fiscal burdens. HCD has underwritten affordable housing projects and issued contracts built around HUD's rule prorating subsidies, and the Proposed Rule will result in large-scale disruptions to HCD's efforts and investments.

i. Section 8 revenue stream disruption consequences for planning and development

HCD has made substantial investments in the acquisition, construction, rehabilitation, or preservation of affordable multifamily housing for Californians.²¹⁵ The Proposed Rule would trigger several operational and financial risks to the properties in HCD's portfolio. Re-verification of household information, termination of tenancy for any mixed-eligibility households, and the attendant eviction proceedings will strain resources that would otherwise be spent maintaining the buildings and responding to tenant concerns. Due to the uptick in evictions and tenant turnover, properties may need to tap into HCD's replacement or operating reserves to cover expenses. If a project

²¹² 5 U.S.C. § 601, et seq. (1996).

²¹³ Housing and Community Development Act of 1980: Verification of Eligible Status, *supra* note 2.

²¹⁴ *See Thompson v. Clark*, 741 F.2d 401, 405 (D.C. Cir. 1984) (“[I]f data in the regulatory flexibility analysis—or data anywhere else in the rulemaking record—demonstrates that the rule constitutes such an unreasonable assessment of social costs and benefits as to be arbitrary and capricious, the rule cannot stand.”) (citation omitted).

²¹⁵ *See, e.g., Affordable Hous. and Sustainable Communities Program* (accessed June 20, 2019); *see also* ANNUAL REPORT 2016-2017, *supra* note 89, at 3–4.

experiences significant cash flow issues, then the project could default, resulting in the dedication of additional significant State funds.

ii. Administrative Costs

HCD will also be faced with increased requests for resources and technical assistance to support property owners with households affected by the rule or in fear of losing tenancy. HCD will need to respond to questions from the public, draft and issue technical assistance memos, modify training and outreach materials, and conduct trainings to clarify HUD rules, especially regarding how these rules affect waitlist priorities. The average cost to the State agency of one technical assistance workshop exceeds \$10,000. Depending on the scope and impact of the Proposed Rule, if implemented, several technical assistance workshops for property owners would be needed throughout the State.

iii. Costs to review revised housing elements from affected local jurisdictions

By changing the population eligible for HUD assistance, the Proposed Rule also undermines California's housing element process, thereby threatening the gains the State has made to secure and build affordable housing for thousands of Californians. In fiscal years 2013-2014 and 2014-2015, HCD staff reviewed 789 housing elements.

The Proposed Rule would undermine local government and State's joint planning effort, and HCD's multimillion-dollar investment, by placing an additional strain on emergency shelters. The purpose of the housing element process is to ensure that jurisdictions at the local level plan for their housing needs by income level: low income, extremely low income, and those requiring emergency shelter. Each jurisdiction, through this precise, expensive, and multi-year process, plans for an amount of emergency housing based on current demographics, such as who is eligible for Section 8 housing. The 9,320 California households with a non-eligible non-citizen could lose their current housing, along with eligible residents unable to obtain the required documentation.²¹⁶ The Proposed Rule could therefore put tens of thousands at the risk of homelessness. These individuals could then end up in an emergency shelter system that was not planned to absorb them, undermining the efficacy of the State's planning efforts and causing significant public health consequences.

²¹⁶ FAMILIES RECEIVING ASSISTANCE FROM PUBLIC HOUSING, *supra* note 29; *Citizens Without Proof*, *supra* note 208, (as many as 11% of U.S. citizens do not have current, unexpired government-issued photo identification).

iv. Other Costs

To address the State's housing needs, HCD must be able to plan for development. Federal affordable housing funds make up a significant portion of the housing resources in California, and the Proposed Rule destabilizes that funding source. Unstable funding erodes HCD's ability to plan for new, affordable housing development and limits efficiency over time. Moreover, the number of severely cost-burdened, low-income renter households has risen. The funding instability that would result from the Proposed Rule would inhibit efforts to address these housing challenges in a sustained effort and deter the ability of developers to create a pipeline of affordable housing.

(2) Housing Finance Agency

i. Administrative Costs

CalHFA will incur significant administrative costs as a result of the Proposed Rule and expend funds that would otherwise be available for providing services to State residents. CalHFA oversees 78 project-based rental assistance projects across the State, which include 4,900 households receiving federal assistance. For each such household, CalHFA has an ongoing obligation to ensure that project owners understand and comply with HUD requirements.

ii. Project-Based Voucher Costs

The Proposed Rule requires project owners to verify each resident's eligibility for Section 8 assistance. Re-verification of household information is not an insignificant task. CalHFA will need to work with project owners in complying with the new requirements to ensure they: (1) contact all households and schedule follow-up; (2) obtain supporting documentation for each individual in each household; and (3) conduct verification through HUD's SAVE System to verify validity of documentation submitted by residents. Further, CalHFA will have to follow up until all project owners are in compliance. In addition, CalHFA will be required to track each individual's eligibility for rental assistance so it can certify that household rents are accurately calculated. Accordingly, CalHFA also will need to track the households that have failed to meet any deadlines to submit documentation or have filed for extensions. The re-verification process will produce additional paperwork containing sensitive personal information, which will impose an additional administrative burden on CalHFA.

Increased vacancies lead to "vacancy loss": money that will not be collected due to vacant units or non-payment of rent. Terminating tenancy for households, or certain members of a household, will also cause increased evictions, a drawn-out and expensive process during which no rent will be paid. These increased vacancies will also disrupt future funding streams. CalHFA's administrative fee is a percentage of HUD's subsidy. HUD's subsidy decreases if a family member earning income is evicted. As a result, CalHFA's administrative fee decreases, while it faces the same costs in overseeing the

project as a whole. Funding resources will dwindle for this important aspect of CalHFA's work.

Unit turnover procedures require property maintenance staff to prepare each unit for the next household. Depending on the number of households required to vacate, many units will sit empty, and again, no rent will be paid. Handling turnover will strain maintenance staff, time they could otherwise spend maintaining the building. In short, a reduced administrative fee could destabilize the long-term financial sustainability of these properties.

iii. Other Costs

Lastly, the Proposed Rule will create widespread confusion about various immigrants' eligibility for public housing. CalHFA will face increased tenant requests for resources to support households affected by the Proposed Rule or in fear of losing tenancy. In sum, the Proposed Rule imposes substantial direct and indirect costs on CalHFA and undermines the effectiveness of its programs.

(3) Department of Fair Employment and Housing

HUD's Proposed Rule will encourage or cause PHAs, individuals, and businesses that own or operate public housing, and other housing providers to discriminate—intentionally or otherwise—against prospective or current tenants on the basis of age, disability, immigration/citizenship status, familial status, national origin, sex, and sexual orientation in violation of the FEHA and the Unruh Act. This will affect claims investigated and prosecuted by DFEH.

HUD's existing Section 214 regulations avoided conflicts with these and other provisions of California law by allowing ineligible individuals to decline to contend eligible status, while allowing public housing authorities and other federal housing assistance providers to prorate those families' benefits. Disrupting that harmony, the Proposed Rule would create conflicts between Federal and State Law while increasing housing discrimination in at least four ways.

First, the Proposed Rule would conflict with express prohibitions in both the FEHA and the Unruh Act against discrimination on the basis of immigration status, citizenship, and national origin; individuals within these protected classes would be denied housing under this Proposed Rule. Second, it would conflict with the FEHA's and Unruh Act's prohibition of discrimination based on an individual's association with a person who is within a protected class; the rule would require a family with members that are ineligible to either separate or be denied assistance. Third, it is likely to have disparate impacts on a number of classes protected by the FEHA and Unruh Act, including age, disability, immigration/citizenship status, familial status, national origin, sex, and sexual orientation.

Fourth, the Proposed Rule will likely exacerbate national origin discrimination violations of the Unruh Act and the FEHA. The DFEH is already receiving complaints and prosecuting civil actions against landlords and others who make presumptions about complainants' immigration or citizenship status based on their national origin, and use threats based on that perceived immigration or citizenship status to, for example, force tenants to vacate housing without going through lawful eviction procedures or to discourage California residents from exercising their rights under the FEHA, Unruh Act, and other laws.

The projected increase in civil rights violations arising from the Proposed Rule will impede DFEH in its mission to respond to and redress the already growing number of complaints arising from anti-immigrant biases that the current administration's rhetoric and policies have exacerbated. For example, in one case that the DFEH recently filed, the complaint alleges that when a Latino family's attorney explained that an eviction notice did not comply with California law, the landlord specifically referred to the current administration's anti-immigrant policies while threatening to report the family to federal immigration authorities if they did not immediately vacate the apartment. In another, the complaint alleges that a vacation rental host denied a temporary rental to an individual while stating, "One word says it all. Asian." The complaint further alleges that the host implied that her actions were inspired by the current administration by stating, "It's why we have [T]rump" and "I will not allow this country to be told what to do by foreigners."

(4) Other California Costs Related to Homelessness

In many cases, California programs work in concert with HUD to ensure the homeless and those at risk of homelessness find housing. For example, California's Housing and Disability Advocacy Program works with HUD's Continuum of Care (CoC) Programs, to provide housing vouchers and disability advocacy to homeless individuals with disabilities.²¹⁷ Additionally, California's Bringing Families Home Program works with HUD's Family Unification Program to connect families in the child welfare system with housing vouchers and supportive services that increase while family reunification.²¹⁸ The Proposed Rule provides no analysis on its effects to these intertwined programs.

Furthermore, the Proposed Rule undermines California's efforts combating homelessness, placing significant costs on the State. For example, CalWORKs Homeless

²¹⁷ DEPARTMENT OF SOCIAL SERVICES, CA'S HOU. AND DISABILITY ADVOCACY PROGRAM FACT SHEET (2019), http://www.cdss.ca.gov/Portals/9/Housing/Housing%20and%20Disability%20Advocacy%20Program%20Fact%20Sheet_May%202019.pdf?ver=2019-05-31-142100-270.

²¹⁸ DEPARTMENT OF SOCIAL SERVICES, BRINGING FAMILIES HOME FACT SHEET (2019), http://www.cdss.ca.gov/Portals/9/Housing/Bringing%20Families%20Home%20Fact%20Sheet_May%202019.pdf?ver=2019-05-09-164313-263.

Assistance Program, which serves families that are homeless and those at risk of homelessness, will face an influx of families searching for permanent housing.²¹⁹ CalWORKs Housing Support Program, a rapid rehousing program which assists homeless families in quickly obtaining permanent housing and provides wrap-around support services, will be similarly burdened.²²⁰ As will California's Home Safe Program, which provides homeless assistance and prevention services for individuals in adult protective services.²²¹

Other examples of costs of the Proposed Rule include schools that serve those displaced and made homeless,²²² and cities, counties, and community-based organizations that help with moving costs to low-income families.²²³ HUD has not considered any of these costs.

3. HUD Failed to Adequately Consider Alternatives

HUD failed to adequately consider alternatives to its Proposed Rule. In its RIA, HUD lists two alternatives: (1) grandfathering in current mixed-eligibility families; and (2) limiting the denial of assistance to households for which the leaseholder is ineligible.²²⁴ The cursory analysis of both alternatives comprises a single paragraph.

²¹⁹ DEPARTMENT OF SOCIAL SERVICES, CALWORKS HOMELESS ASSISTANCE PROGRAM FACT SHEET (2019), [http://www.cdss.ca.gov/Portals/9/Housing/Homeless%20Assistance%20\(HA\)%20Fact%20Sheet_May%202019.pdf?ver=2019-05-09-164314-283](http://www.cdss.ca.gov/Portals/9/Housing/Homeless%20Assistance%20(HA)%20Fact%20Sheet_May%202019.pdf?ver=2019-05-09-164314-283).

²²⁰ DEPARTMENT OF SOCIAL SERVICES, CALWORKS HOUS. SUPPORT PROGRAM FACT SHEET (2019), [http://www.cdss.ca.gov/Portals/9/Housing/Housing%20Support%20Program%20\(HSP\)%20Fact%20Sheet_May%202019.pdf?ver=2019-05-31-141110-860](http://www.cdss.ca.gov/Portals/9/Housing/Housing%20Support%20Program%20(HSP)%20Fact%20Sheet_May%202019.pdf?ver=2019-05-31-141110-860).

²²¹ DEPARTMENT OF SOCIAL SERVICES, HOME SAFE PROGRAM FACT SHEET (2019), http://www.cdss.ca.gov/Portals/9/Housing/Home%20Safe%20Program%20Fact%20Sheet_April%202019.pdf?ver=2019-03-29-170041-463.

²²² See, e.g., McKinney–Vento Homeless Assistance Act, 42 U.S.C. § 11431 et. seq. (2016) (requiring state and local jurisdictions to provide transportation to and from school to homeless children).

²²³ See, e.g., ECHO Housing, Rental Assistance Program, <https://www.echofairhousing.org/rental-assistance-program.html> (helps low-income Livermore and Pleasanton residents with move-in costs).

²²⁴ RIA, *supra* note 1, at 17 (“Alternatives”).

HUD's first proposed alternative is grandfathering in currently mixed-eligibility families. Under this framework, the Proposed Rule would only apply to new applicants, gradually eliminating mixed-eligibility households through attrition. HUD acknowledged that this option would "fulfill the objectives of the rule but would limit the transition costs," but provided no further analysis or explanation of why this alternative is not preferable to the Proposed Rule.²²⁵

HUD's second alternative would limit the denial of assistance only to households where the leaseholder is ineligible.²²⁶ HUD calculates that this alternative would reduce the number of households affected from 25,000 to 17,000, and would "likely limit the adverse impact of the transition on eligible children."²²⁷ While acknowledging that this option would mitigate some harm to vulnerable children, HUD provides no explanation as to how its Proposed Rule outweighs the advantages of this alternative.

HUD limits its brief and inadequate analysis to those two options, and fails to consider any other alternatives. Other options could include continuing requiring SAVE verification only of persons applying for and directly receiving subsidies. Another option would be to alter the proration formula so that individuals who do not contend eligibility reimburse HUD for any marginal costs of their being present in subsidized housing with eligible individuals. Still another option would be exempting families with either a parent or child that does not contend eligibility to preserve parent-child relationships. And another option would be to allow proration when a family that would otherwise have their assistance terminated makes good faith efforts but is unsuccessful in obtaining other affordable housing. In short, there are many alternatives that HUD could and should have considered that would diminish unnecessary harm but that it did not.

B. HUD's Proposed Rule Exceeds Statutory Authority

Federal agencies only have the authority to adopt regulations that are based on a permissible and reasonable construction of the governing statute.²²⁸ Regulations that are "manifestly contrary to the statute" are beyond the agency's authority to adopt and will be found to be "in excess of statutory jurisdiction, authority," and "not in accordance with law," in violation of the APA.²²⁹

In passing Section 214, Congress intended to ensure that individuals with eligible immigration status would receive assistance while keeping mixed-eligibility families together in the same home. The plain language of the statute conveys this intent: "If the eligibility for financial assistance of at least one member of a family has been

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984); *see also* 5 U.S.C. § 706(2)(B).

²²⁹ *Chevron*, 467 U.S. at 844.

affirmatively established 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...[.]”²³⁰ There is no mandate to force housing authorities to affirmatively establish ineligibility.²³¹ Instead, Congress allowed for a path to keep families with mixed eligibility together by permitting proration. The Proposed Rule would foreclose that option, forcing families to disband in an unreasonable statutory construction of Section 214. HUD has no authority to “contradict[] what Congress has said” and the Proposed Rule is therefore invalid.²³²

C. HUD’s Proposed Rule Violates Equal Protection Principles

The Proposed Rule is inconsistent with Equal Protection principles enshrined in the U.S. Constitution. In effect, it creates classifications between U.S. citizens with immigrant family members and those without immigrant family members. This would create barriers to housing benefits used by U.S. citizens, rendering their eligibility for those benefits meaningless if their immigrant family members will be forced to leave the family’s housing. Further, the Proposed Rule unlawfully discriminates against Latino individuals and families based on their ethnicity and national origin.

1. The Proposed Rule Unlawfully Discriminates Between U.S. Citizens With and Without Immigrant Family Members Based on Alienage

First, the rule discriminates against families with noncitizen members based on their alienage status. Classifications based on alienage (i.e., directed at noncitizens) are generally subject to strict scrutiny.²³³ Under strict scrutiny, a law is upheld if it is proved necessary to achieve a compelling government purpose.²³⁴ The Proposed Rule clearly fails this test; as discussed above, as even assuming that HUD’s ostensible purpose in adopting it is compelling, it is unnecessary to achieve it as HUD’s own documents show that less restrictive alternatives would achieve the federal agency’s goals.²³⁵

And even under rational basis review, the rule fails. The Supreme Court has previously invalidated Congress’s decision to exclude from the food stamp program

²³⁰ 42 U.S.C. § 1436a(b)(2).

²³¹ 42 U.S.C. § 1436a(i)(2)(A).

²³² *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 218 n.4 (2009); *Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 681-86 (9th Cir. 2007) (setting aside agency action that is contrary to governing law).

²³³ See, e.g., *Nyquist v. Mauclet*, 432 U.S. 1, 9 (1977).

²³⁴ See, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984).

²³⁵ See RIA, *supra* note 1, at 17 (discussing less restrictive alternatives that would “fulfill the objectives of the rule but would limit the transition costs”).

households containing unrelated individuals on the basis that it represented “a bare congressional desire to harm a politically unpopular group.”²³⁶ There, the Court noted that the “unrelated person” provision was irrelevant to the stated purpose of the Food Stamp Act, and because it did not operate to rationally further the prevention of fraud, it was not rationally related to furthering any legitimate government interest. The practical operation of the classification acted to exclude not only those who were likely to abuse the program but also “persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility.”²³⁷ Traditional equal protection analysis does not require that every classification be drawn with precise “mathematical nicety,” but the classification cannot be “wholly without any rational basis.”²³⁸ Again, HUD’s Proposed Rule fails even this generous standard, as does not advance the goals of the federal housing assistance programs, prevent fraud, or further any legitimate governmental interest.

2. The Proposed Rule Unlawfully Discriminates Based on Ethnicity and National Origin

The Proposed Rule also discriminates on the basis of national origin and ethnicity. The Fifth Amendment contains an implicit guarantee of equal protection to prevent classifications based on such suspect factors. Such classifications receive strict scrutiny, and even facially neutral policies and practices will be held unconstitutional when they reflect a pattern unexplainable on grounds other than animus.²³⁹

Given the policy’s patent lack of rational basis, it cannot be explained on grounds other than impermissible animus. Courts look to the following “non-exhaustive” factors to determine whether such animus is present:

- (1) statistics demonstrating a “clear pattern unexplainable on grounds other than” discriminatory ones,
- (2) “[t]he historical background of the decision,”
- (3) “[t]he specific sequence of events leading up to the challenged decision,”
- (4) the defendant’s departures from its normal procedures or substantive conclusions, and
- (5) relevant “legislative or administrative history.”²⁴⁰

²³⁶ *U. S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

²³⁷ *Id.* at 538.

²³⁸ *Id.*

²³⁹ *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

²⁴⁰ *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1158–59 (9th Cir. 2013); *see also Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 819 (4th Cir. 1995) (adding to the *Arlington Heights* factors evidence of a “consistent pattern” of actions of decision-makers that have a much greater harm on minorities than on non-minorities).

While some of the above factors may require further factual development, several of them clearly point toward an equal protection violation here. First, the rule’s effect will fall much more heavily on Latino immigrants. HUD data show that 87 percent of the individuals who are directly affected by the rule are Latino.²⁴¹ More generally, a very high proportion of the undocumented population in the United States—81 percent—is from Mexico and Central America.²⁴²

As discussed in detail *supra* at III(A)(1)(b), the history of HUD’s policies in this area also indicates that this change is unexplainable for reasons other than animus. The conditions that drove HUD to adopt the proration rules almost a quarter-century ago have not changed, but HUD has reversed this longstanding family preservation measure, coming to a radically different “substantive conclusion[]” with no rational explanation.

Finally, there is robust publicly available evidence that the Rule (like other anti-immigrant decisions by this Administration) is driven by ethnic and national-origin-based animus.²⁴³ Courts have recently allowed Equal Protection claims to proceed on this basis against other anti-immigrant actions by this Administration.²⁴⁴ Although the Supreme Court ruled that the Administration’s “travel ban” targeting Muslims seeking to travel to the United States was not unconstitutional on religious discrimination grounds,²⁴⁵ courts

²⁴¹ Ctr. on Budget and Pol’y Priorities analysis of 2017 HUD administrative data (non-public). The Census Bureau defines Hispanic or Latino “as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.” Census Bureau, *About Hispanic Origin*, <https://www.census.gov/topics/population/hispanic-origin/about.html> (last revised Mar. 7, 2018). Thus, whether the Proposed Rule has a disparate impact based on national origin is an intrinsic part of whether it has such an impact based on ethnicity.

²⁴² MIGRATION POLICY INST., UNAUTHORIZED IMMIGRANT POPULATION (last visited June 26, 2019), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/CA>.

²⁴³ See, e.g., *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1100 (N.D. Cal. 2018) (cataloguing President Trump’s statements showing animus toward non-white immigrants).

²⁴⁴ See, e.g., *Regents of Univ. of California v. United States Dep’t of Homeland Sec.*, 298 F. Supp. 3d 1304, 1315 (N.D. Cal. 2017), *aff’d sub nom. Regents of the Univ. of California v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018), petition for cert. filed, No. 18-587 (U.S. Nov. 5, 2018) (holding that the allegations contained in the DACA complaints raised “a plausible inference that racial animus towards Mexicans and Latinos was a motivating factor in the decision to end DACA”); see also *Ramos*, 336 F. Supp. 3d at 1098–105 (N.D. Cal. 2018) (holding “that, at the very least, the evidence submitted by plaintiffs supports serious questions on the merits on the Equal Protection Claim,” justifying preliminary injunction against termination of Temporary Protected Status [TPS] for nationals of affected countries).

²⁴⁵ See *Trump v. Hawaii*, 138 S.Ct. 2392 (2018).

have held that the reasoning of this opinion does not apply to measures impacting immigrants currently residing in the United States where no national security concerns are implicated.²⁴⁶ Further, given the lack of a rational connection between the ostensible goals of the Proposed Rule and the rule itself, it cannot “reasonably be understood to result from a justification independent of unconstitutional grounds.”²⁴⁷ This “consistent pattern” of animus will support a court’s holding that the policy is discriminatory.

D. The Proposed Rule Violates the Fair Housing Act

Under the Fair Housing Act, HUD has an obligation to ensure that its programs and activities affirmatively further fair housing.²⁴⁸ In addition to their constitutional dimensions, disparate impact claims are cognizable under the FHA.²⁴⁹ As discussed above, the Proposed Rule intentionally discriminates against protected classes. Also, as discussed above, the Proposed Rule will result in a disparate impact on protected classes. Thus, HUD’s action in adopting the Proposed Rule would violate the FHA.²⁵⁰

Liability may be established under the Fair Housing Act based on a practice’s discriminatory intent or effect.²⁵¹ “Discriminatory effect” describes conduct that actually or predictably results in discrimination.²⁵² A practice has a discriminatory effect where it results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, disability,

²⁴⁶ See, e.g., *Ramos*, 336 F. Supp. 3d at 1105–08.

²⁴⁷ *Id.* at 1108 (quoting *Trump v. Hawaii*, 138 S.Ct. at 2420).

²⁴⁸ See 42 U.S.C. § 3608(d),(e)(5); see also *Cty. of Westchester v. U.S. Dep’t of Hous. & Urban Dev.*, 802 F.3d 413, 432 (2d Cir. 2015) (“HUD is required to further the policies of [the FHA]”).

²⁴⁹ See, e.g., *Tex. Dept. of Hous. & Cmnty Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507, 18 (2015); see also *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 431-32 (4th Cir. 2018), *cert. denied* No. 18-1217 (U.S. May 13, 2019) (“[I]n the absence of a specific exemption from liability for exclusionary practices aimed at illegal immigrants, we must infer that Congress intended to permit disparate-impact liability for policies aimed at illegal immigrants when the policy disparately impacts a protected class, regardless of any correlation between the two.”).

²⁵⁰ The Fair Housing Act exemptions listed in 42 U.S.C. §§ 3603(b) and 3607 list no exemption for actions against HUD; see also Robert Schwemm, *Housing Discrimination Law and Litigation*, THOMAS REUTERS 2018 Section 12B:7 (Government Defendants) (finding no authority exempting federal government as a defendant for Fair Housing Act lawsuits).

²⁵¹ 42 U.S.C. § 3604; 24 C.F.R. § 100.500; *Texas Dept. of Hous.*, 135 S. Ct. at 2525 and 2533; *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300, 306.

²⁵² *Pfaff v. U.S. Dep’t of Hous. & Urban Dev.*, 88 F.3d 739, 745 (9th Cir. 1996).

familial status, or national origin.²⁵³ A legally sufficient justification exists where the challenged practice: (1) is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (2) those interests could not be served by another practice that has a less discriminatory effect.²⁵⁴

HUD's Proposed Rule will create discriminatory effects by eliminating proration to mixed-eligibility families. Families with ineligible members will face a disparate impact based on familial status. According to HUD's analysis, 70% of the households negatively impacted by this proposed rule are families with eligible children.²⁵⁵ Other HUD data confirms this impact, with children under 18 comprising 38% of those receiving HCV, PBRA, and public housing assistance overall, while comprising 53% of those living in mixed-eligibility families.²⁵⁶ Statistical analysis indicates that the percentage of children who would lose benefits under the Proposed Rule is double that of the adults who would lose subsidies. This data evidences a disparate impact based on familial status. Disabled individuals also face disproportionate harm, though HUD data for California is not yet available.²⁵⁷

Additionally, as discussed above, the rule will also result in disparate impacts on the basis of race and national origin. Limited HUD data is available to compare suspect classes between all current recipients of HUD subsidies versus mixed-eligibility family recipients in California. The data that has been made available reveals a disparate impact of the Proposed Rule on the Latino population nationally. Whereas Latino individuals comprise 20% of HUD recipients of HCV, PBRA, and public housing assistance, they comprise 85% of people living in mixed-eligibility families affected by the Proposed

²⁵³ 42 U.S.C. § 3604; 24 C.F.R. § 100.500; *see also Tex. Dep't. of Hous.*, 135 S. Ct. 2522; *see also Pfaff*, 88 F.3d at 746.

²⁵⁴ 24 C.F.R. § 100.500; *see also Texas Dept. of Hous.*, 135 S. Ct. at 2525 (approving of exception for policies "necessary to achieve a valid interest"); *Budnick v. Town of Carefree* (9th Cir. 2008) 518 F.3d 1109, 1118 ("A defendant may rebut a plaintiff's proof of disparate impact by supply[ing] a legally sufficient, nondiscriminatory reason") (citing *Pfaff*, 88 F.3d at 746).

²⁵⁵ RIA, *supra* note 1, at 8.

²⁵⁶ CTR. ON BUDGET POL'Y PRIORITIES (CBPP), DEMOGRAPHIC DATA HIGHLIGHT POTENTIAL HARM OF NEW TRUMP PROPOSAL TO RESTRICT HOUSING ASSISTANCE (July 1, 2019) <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

²⁵⁷ *See* CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING (Sept. 2012), http://www.hcd.ca.gov/policy-research/plans-reports/docs/ai_final_chapt5_hsg_voucher0912.pdf ("Approximately 48% of households served by the Housing Choice Voucher program are families with one or more members with at least one disability.").

Rule.²⁵⁸ Statistical analysis indicates that this disparate impact is statistically significant: the percentage of Latino persons who will lose benefits would be 26 times greater than the percentage of non-Latino persons who would lose subsidies under the Proposed Rule. HUD data regarding California is currently unavailable, but may reveal further disparate impacts based on other races (e.g., Asian, African American, and Native American) as well as national origin. As California has 37% of the country's mixed-eligibility households, is majority minority, and has a Latino population that outnumbers the White population, the Proposed Rule's disparate impacts on race and national origin will be felt acutely in California.

Also discussed above, HUD will also create disparate impacts by requiring that *all* household members submit to new verification procedures.²⁵⁹ If eligible individuals do not submit the required documentation in time, they will lose their subsidies. Significant numbers of elderly U.S. citizens, citizens of color, citizens with disabilities, and citizens with low incomes may be impacted:

- 18% of citizens over the age 65 do not have a photo ID;
- 8% of white citizens lack a photo ID;
- 16% of Hispanic citizens have no current government-issued photo ID (low sample size); and
- 25% of African American citizens lack a photo ID.²⁶⁰

Here, HUD has made no showing that it is furthering a legitimate interest. The administration's history of animus toward immigrant groups, as well as HUD's own analysis that the Proposed Rule will result in reduced quantity and quality of housing, undercuts HUD's pretextual justifications.²⁶¹ Furthermore, HUD has not demonstrated that its interests could not be served by another practice with a less discriminatory effect. HUD's RIA, as described above, is woefully inadequate in considering alternatives.²⁶²

²⁵⁸ CTR. ON BUDGET POL'Y PRIORITIES, DEMOGRAPHIC DATA HIGHLIGHT POTENTIAL HARM OF NEW TRUMP PROPOSAL TO RESTRICT HOUSING ASSISTANCE (July 1, 2019) <https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing>.

²⁵⁹ See *Betsey v. Turtle Creek Associates*, 736 F.2d 983, 988 (4th Cir. 1984) (holding that a landlord's change to its eviction policies resulting in evictions of families with children created a disparate impact to minorities that violated the Fair Housing Act).

²⁶⁰ *Citizens Without Proof*, *supra* note 208.

²⁶¹ See *Tex. Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) 135 S.Ct. 2507, 2522, (finding that disparate impact claims "permits plaintiffs to counteract [. . .] disguised animus that escape easy classification as disparate treatment."); see also *Huntington Branch, N.A.A.C.P. v. Huntington*, 844 F.2d 926, 935 (2d Cir.1988) (noting that "clever men may easily conceal their motivations").

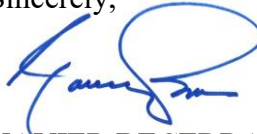
²⁶² RIA, *supra* note 1, at 17. In fact, in one of the alternatives HUD did briefly consider, HUD found that the alternative *would* "fulfill the objectives of the rule but

The Proposed Rule will create significant disparate impacts for protected classes and the Secretary has failed to consider both these impacts and less discriminatory alternatives to the Proposed Rule.²⁶³

IV. CONCLUSION

HUD has utterly failed to account for the potential impact the Proposed Rule would have on states and their residents, especially in California. The Rule will have truly damaging and irreparable ramifications to our State's families, employers, economy, and public agencies for years to come. For the reasons set forth above, California strongly opposes the Proposed Rule and urges that it be withdrawn.

Sincerely,



XAVIER BECERRA
California Attorney General

would limit the transition costs.” Nonetheless, the alternative was not meaningfully considered.

²⁶³ See *Mt. Holly Gardens Citizens in Action, Inc., v. Township of Mount Holly*, 658 F.3d 375 385-87 (3d Cir. 2011) (holding that the proposed less discriminatory alternative was sufficient to avoid summary judgment); *Gallagher v. Magner*, 619 F.3d 823, 837-88 (8th Cir. 2010) (plaintiffs' alternative sufficed to survive summary judgment); *Fair Housing Council of Orange County, Inc. v. Ayres*, 855 F. Supp. 315, 319 (C.D. Cal. 1994) (holding against defendant in part for failing to consider less discriminatory alternatives).