



789 N. Sherman Street, Suite 300 · Denver, CO 80203
303.573.5669 · info@copolicy.org · copolicy.org

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

Re: HUD Docket No. FR-6524-P-01 Housing and Community Development Act of 1980: Verification of Eligible Status

To Whom It May Concern:

The Colorado Center on Law and Policy (CCLP) strongly opposes the proposed rule published by the Department of Housing and Urban Development (HUD) on February 20, 2026, "*Housing and Community Development Act of 1980: Verification of Eligible Status*" (Docket No. FR-6524-P-01). We urge its withdrawal, allowing HUD's current, long-standing regulations to remain in place. CCLP is a nonprofit, nonpartisan anti-poverty organization that advocates at the state level and in administrative and legal proceedings to support the needs and legal rights of Coloradans facing economic insecurity. This includes many families who would have their rights violated and be displaced by this proposed rule.

HUD frames this rule as a straightforward effort to bring its regulations into alignment with Section 214 of the Housing and Community Development Act of 1980. It is not. The rule directly contradicts the plain text of the statute it claims to implement, which says that financial assistance *shall* be made available on a prorated basis to families like these.¹ It eliminates a mechanism that Congress deliberately designed to keep mixed-status families housed together. It imposes burdensome new documentation and verification requirements that will create barriers for eligible citizens, legal residents, and other eligible noncitizens. It significantly underestimates the costs it would place on displaced families, on immigrant communities already experiencing severe housing insecurity, and on state and local governments struggling to address a severe homelessness crisis. Lastly, it does not satisfy the fundamental requirements of reasoned agency decision-making mandated by federal law.

The Rule Would Cause Severe Harm to Children and Families

The most immediate and significant consequence of this rule is its impact on children. HUD's own analysis estimates that approximately 36,000 eligible U.S. citizen children will lose housing assistance because of this rule.² These children are entitled to assistance under Section 214 but are

¹ 42 U.S.C. § 1436a(b)(2) ("any financial assistance made available to that family by the applicable Secretary *shall* be prorated").

² U.S. Dep't of Housing and Urban Development, Regulatory Impact Analysis: Housing and Community Development Act of 1980: Verification of Eligible Status, at 13 n.26 (Sept. 30, 2025), <https://www.regulations.gov/document/HUD-2026-0199-0006> [hereinafter Regulatory Impact Analysis] ("HUD anticipates approximately 36,000 eligible children may choose to exit housing assistance to remain with their ineligible adult family member.").

losing it because the rule provides no practical option for their families to remain together in assisted housing. For the vast majority of affected families, households where parents are ineligible but children are citizens, expelling a parent to preserve housing assistance is not a realistic option. HUD's analysis recognizes this, projecting that around 78 percent of mixed-status families will leave assisted housing together rather than separate.³

This outcome directly contradicts the research that HUD relies on to justify its housing assistance programs. In its own Regulatory Impact Analysis, HUD cites the work of Chetty et al. (2016) to underscore the importance of housing choice vouchers, especially noting that neighborhood effects are "especially important for children."⁴ However, the new rule displaces tens of thousands of those very children from stable housing situations, putting them at risk of the instability that research consistently links to poorer educational outcomes, increased school mobility, and long-term harm to economic mobility and health. HUD cannot simultaneously use this research to defend the value of housing assistance while ignoring its implications for the children this rule displaces.

The rule also raises concerns under Executive Order 13045, which requires federal agencies to identify and assess policies that may pose environmental health or safety risks to children and to give those risks serious consideration before proceeding.⁵ Housing instability is among the most well-documented risks, linked with substandard living conditions, disrupted medical care, food insecurity, and exposure to unsafe environments. HUD's own regulatory alternatives section acknowledges that limiting this rule's scope to exclude families with children "would also avoid a conflict with Executive Order 13045."⁶ Rather than resolving that conflict, HUD moved to proceed with the broader rule, offering no meaningful explanation for why displacing 36,000 eligible children is consistent with the protections that Executive Order requires.

The Rule Contradicts the Plain Text of Section 214

HUD frames this rule as an effort to bring its regulations into closer alignment with Section 214 of the Housing and Community Development Act of 1980. The opposite is true. The rule eliminates protections that Congress deliberately built into the statute, contradicts the plain meaning of its mandatory language, and destroys the mechanism Congress designed to balance two explicitly stated goals: limiting housing assistance to eligible individuals while preventing the breakup of mixed-status families.

The language in Section 214 is clear. Under 42 U.S.C. § 1436a(b)(2), once the eligibility of at least one family member is established, and the ineligibility of one or more other family members has not been affirmatively established, financial assistance "shall be prorated" based on the number of eligible members.⁷ The word "shall" is mandatory, meaning that HUD does not have the authority to eliminate prorated assistance for mixed families; it is required to provide such assistance. HUD's proposal to discontinue ongoing prorated assistance for mixed families does not align with Section 214; instead, it contradicts it.

³ Regulatory Impact Analysis at 47, Appendix A, Table A2.

⁴ Regulatory Impact Analysis at 12 (citing Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," *American Economic Review* 106(4): 855-902 (2016)).

⁵ Exec. Order No. 13,045, 62 Fed. Reg. 19,885 (Apr. 21, 1997).

⁶ Regulatory Impact Analysis at 37 n.61.

⁷ 42 U.S.C. § 1436a(b)(2) ("any financial assistance made available to that family by the applicable Secretary shall be prorated")

When Congress amended Section 214 through the Housing and Community Development Act of 1987, it had two clear and equally important goals: to limit scarce housing assistance to eligible individuals, as evident from the statute's plain text, and to prevent the separation of mixed-status families, a purpose written directly into Section 214(c)(1)(A), which authorizes continued assistance specifically "to avoid the division of a family," and confirmed by the legislative history reflecting Congress's intent to protect "the sanctity of the family."⁸

Congress implemented its intent not only through the mandatory proration provision, but also through an explicit statutory exception at 42 U.S.C. § 1436a(d)(6), which states that the 24-month termination penalty for knowingly housing an ineligible individual "shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family."⁹ Congress built family protection directly into the statute's enforcement mechanism. HUD cannot regulate it away.

HUD characterizes the "do not contend" provision as a loophole inconsistent with Section 214's requirements. This characterization is incorrect. The "do not contend" option is a mechanism that reflects Congress's dual intent. Under current regulations, a family member who is not eligible may decline to make any claim about their immigration status rather than being forced to formally declare themselves ineligible.¹⁰

This distinction is important because the trigger for mandatory proration under 42 U.S.C. § 1436a(b)(2) relies on the fact that the ineligibility of family members has "not been affirmatively established." When a family member chooses not to contest their eligibility, their ineligibility is never formally established. As a result, prorated assistance can go to the eligible members, as the statute requires, while the ineligible member receives nothing. This is not a workaround; it is the statutory framework functioning exactly as Congress intended.

HUD's own proposed rule concedes as much, acknowledging in footnote 14 that "there are relatively few noncitizens who falsely declare citizenship under its current rules because individuals who are not eligible citizens or noncitizens have the opportunity to elect 'do not contend.'"¹¹ If the existing system already prevents false claims of eligibility, HUD has not identified a genuine problem that eliminating "do not contend" would solve. What it would accomplish is forcing ineligible family members into a formal verification process that will inevitably result in termination, DHS reporting, and family displacement; outcomes Congress specifically sought to prevent.

New Documentation Requirements Will Harm Eligible Citizens and Legal Residents

The rule's new documentation and verification requirements pose serious risks not only to mixed-status families but to all US citizens, legal residents, and other eligible noncitizens who currently receive HUD assistance. Under current regulations, these individuals need only submit a signed

⁸ Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 164, 101 Stat. 1815, 1860-63 (1988); see also 42 U.S.C. § 1436a(c)(1)(A) (authorizing continued assistance "to avoid the division of a family"); Restrictions on Assistance to Noncitizens, 59 Fed. Reg. (Aug. 25, 1994) (Docket No. R-94-409, FR Doc. No. 94-20710), <https://www.govinfo.gov/content/pkg/FR-1994-08-25/html/94-20710.htm>.

⁹ 42 U.S.C. § 1436a(d)(6).

¹⁰ 24 C.F.R. § 5.508(e) ("If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family.").

¹¹ Proposed Rule, 91 Fed. Reg. at 8152 n.14.

declaration of citizenship or immigration status under penalty of perjury.¹² Public Housing Agencies (PHAs) may request additional documentation in limited instances, but it is not a universal requirement.¹³ This proposed rule would replace that measured approach with mandatory documentary proof and primary verification through the Systematic Alien Verification for Entitlements (SAVE) system for every household member regardless of age or status.

This additional burden will fall disproportionately on those least able to navigate complex documentation processes: low-income households, elderly residents, and people of color are significantly less likely to have these documents readily available.¹⁴ Approximately 9 percent of voting-age American citizens, more than 21 million people, lack ready access to documentary proof of citizenship such as a birth certificate, passport, or naturalization certificate.¹⁵ For HUD-assisted households, most of which are already facing financial instability, the costs and time required to obtain replacement documents create a significant barrier to maintaining their assistance.

Compounding this problem, SAVE only added citizenship verification capability in 2025, and U.S. Citizenship and Immigration Services itself has acknowledged the system carries a risk of sharing inaccurate information with agencies like HUD.¹⁶ HUD's own analysis concedes that SAVE currently cannot process birth certificates or passports, the most common citizenship documents, meaning a failed automated response triggers a burdensome secondary verification process for tenants and administrators alike.¹⁷

The Rule's Costs Are Far Greater Than HUD Acknowledges

HUD estimates the quantifiable costs of this rule at \$17 to \$33 million, characterizing compliance costs for HUD itself as small and insignificant, describing the overall costs as primarily upfront costs of adjustment.¹⁸ However, this description is not supported by the evidence. HUD's cost estimate is deliberately narrow, capturing only a limited set of administrative and moving costs while excluding the vast majority of real-world consequences that this rule would impose on families, communities, as well as state and local governments. A cost estimate that fails to account for the full range of foreseeable consequences is not a serious evaluation of its costs.

HUD's approach to estimating moving costs demonstrates this issue. They estimate moving costs at approximately \$900 per household, based on an assumption that all moves are local, completed without a moving company, and involve only a small truck rental, three people working eight hours, and minimal related expenses.¹⁹ This assumption has little connection to the reality faced by families who lose assisted housing. The \$900 figure does not consider security deposits for new

¹² 24 C.F.R. § 5.508(b)(1); see also Congressional Research Service, Noncitizen Eligibility for Federal Housing Programs (noting that "U.S. citizens are not required under federal law to provide proof of status beyond the signed declaration").

¹³ 24 C.F.R. § 5.508(b)(1); see also Proposed Rule, 91 Fed. Reg. at 8152 (noting that under current rules "a responsible entity has discretion to request supporting documentation").

¹⁴ Brennan Center for Justice, "Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available" (June 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>

¹⁵ *Id.* (finding that 11 percent of American citizens of color lack ready access to documentary proof of citizenship compared to 8 percent of white citizens, and noting disproportionate impact on low-income and elderly Americans).

¹⁶ National Housing Law Project, Analysis of HUD's Proposed Rule on Mixed Status Families, at 9 (Feb. 24, 2026) (quoting First Amended and Supplemental Complaint, *League of Women Voters v. U.S. Dep't of Homeland Security*, Case No. 25-cv-3501-SLS, at 33 ¶ 112 (Jan. 21, 2026)).

¹⁷ Proposed Rule, 91 Fed. Reg. at 8159.

¹⁸ Regulatory Impact Analysis at 5 ("The quantifiable upfront costs for responsible entities and tenants could range from an estimated \$17 million to \$33 million."); *id.* at 34 (describing HUD compliance costs as "expected to be small and insignificant").

¹⁹ Regulatory Impact Analysis at 32.

units, application fees, the cost of temporary housing during the search period, or the fact that families losing assisted housing often encounter private market rents that are inherently unaffordable for very-low-income households and may exceed what these families would qualify for. For a family of four living below the federal poverty line, which describes the typical mixed-status family in HUD's own data, the true cost of displacement into the private market would be substantially higher than HUD acknowledges.²⁰

The 2022 Colorado Self-Sufficiency Standard finds that this income falls below the minimum needed to meet basic needs without assistance in every single county in Colorado, where the Standard for a two-adult family with young children ranges from \$62,162 in the least expensive counties to more than \$107,000 in the most expensive.²¹ HUD's own Fair Market Rent data shows that a two-bedroom unit in the Denver metropolitan area costs \$2,089 per month, and even in Colorado's least expensive counties, two-bedroom rents average nearly \$1,000 per month, meaning rent alone would consume a substantial portion of the average displaced family's entire annual income.²² For families already living far below what is needed for basic stability, receiving an average of²³ □ the loss of this assistance is devastating. HUD's cost estimate for displacing these families does not reflect the new financial reality they will face in Colorado's private market.

The Rule Will Worsen Colorado's Housing and Homelessness Crisis

HUD's own analysis concedes that the net effect of this rule on homelessness is "ambiguous" and difficult to predict yet proceeds without resolving that uncertainty.²⁴ That admission is particularly troubling given the worsening affordable housing crisis across the country.

Colorado, like almost every state in the country, is facing an affordable housing crisis. A family would need to work 2.5 full-time jobs at our state's minimum wage to afford a two-bedroom rental home at fair market rent.²⁵ Colorado faces a shortage of 136,000 affordable rental homes for its lowest-income residents, with only 27 affordable units available for every 100 extremely low-income households statewide.²⁶ Sixty-seven percent of Colorado's severely cost-burdened renters are extremely low-income households earning at or below the federal poverty guideline or 30 percent of area median income.²⁷ Research consistently finds that housing costs are the primary driver of homelessness, with areas experiencing rising rents seeing corresponding increases in homelessness while areas with slower rent growth see it decline.²⁸ For low-income families losing their housing

²⁰ Regulatory Impact Analysis at 9 (noting that the average mixed family income of \$27,000 places a typical four-person mixed household below the federal poverty line, which in 2024 was approximately \$31,200 for a four-person household).

²¹ Annie Kucklick, Lisa Manzer, and Alyssa Mast, *The Self-Sufficiency Standard for Colorado 2022*, Center for Women's Welfare, University of Washington, prepared for Colorado Center on Law and Policy (Nov. 2022), at Table 3 (pp. 21-23)(showing Self-Sufficiency Standard ranging from \$62,162 to \$107,462 annually for a two-adult family with one preschooler and one school-age child across all Colorado counties).

²² U.S. Department of Housing and Urban Development, FY 2026 Fair Market Rents, Colorado, available at <https://www.huduser.gov/portal/datasets/fmr.html> (showing Denver-Aurora-Centennial MSA two-bedroom FMR of \$2,089 per month and two-bedroom FMRs in the least expensive Colorado counties ranging from approximately \$973 per month).

²³ Regulatory Impact Analysis at 9 (noting average annual subsidy received by mixed families is approximately \$11,000 per household).

²⁴ Regulatory Impact Analysis at 34.

²⁵ National Low Income Housing Coalition, *2026 Colorado Housing Profile* (Mar. 2026), https://nlihc.org/sites/default/files/SHP_CO.pdf [hereinafter NLIHC Colorado Profile] (citing 2024 ACS PUMS).

²⁶ NLIHC Colorado Profile at 1 (citing 2024 ACS PUMS).

²⁷ Id.

²⁸ The Pew Charitable Trusts, "How Housing Costs Drive Levels of Homelessness" (Aug. 22, 2023), <https://www.pew.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness> ("A large body of academic research has consistently found that homelessness in an area is driven by housing costs" and finding that in metro areas where rents rose sharply between 2017 and 2022, homelessness rose, while areas with slower rent growth experienced declines in homelessness).

subsidy, displacement into a market already this constrained and unaffordable is a direct path to housing instability and homelessness.

Family homelessness in Colorado increased by 134 percent between 2023 and 2024, one of the largest increases recorded in the country, and more than 52,000 people sought housing and homelessness services through state partner agencies in 2024 alone.²⁹ A federal rule that displaces thousands of additional low-income families into this environment, without accounting for the downstream costs that displacement will impose on Colorado communities, compounds a crisis that is already overwhelming the state's capacity to respond.

The Rule Fails the Administrative Procedure Act's Requirements for Reasoned Decision-Making

The Administrative Procedure Act requires that agency rules not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."³⁰ Under *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983), courts applying this standard require agencies to take a "hard look" at the relevant factors before issuing a rule. An agency acts arbitrarily when it fails to consider important aspects of the problem, offers explanations that run counter to the evidence before it, or relies on factors Congress did not intend it to consider. This rule fails that standard in several respects.

HUD failed to consider important aspects of the problem this rule aims to address. As discussed throughout this comment, HUD concedes that the rule's impact on homelessness is "ambiguous" yet proceeds without resolving that uncertainty.³¹ HUD's cost estimate excludes many foreseeable consequences of the rule, including downstream costs to state and local governments that will absorb the displacement this rule causes. The rule would also require all household members, including US citizens with no ineligible members, to provide documentary proof of citizenship and submit to primary verification through the SAVE system. For the millions of low-income Americans who lack ready access to these documents, the costs of obtaining them and the risk of wrongful denial represent a significant and foreseeable harm that HUD's analysis does not adequately address.³² These harms are treated as an acceptable collateral consequence without sufficient explanation.

HUD's rationale for the rule is also contradicted by its own evidence. The department argues that eliminating the "do not contend" option is necessary to prevent false claims of eligibility; however, it acknowledges within the proposed rule that "there are relatively few noncitizens who falsely declare citizenship under its current rules," precisely because the "do not contend" option exists.³³ HUD cites research demonstrating that housing assistance profoundly benefits children, yet adopts a rule that displaces approximately 36,000 eligible US citizen children from that assistance without meaningfully grappling with that contradiction.³⁴ HUD proposes to make SAVE the mandatory primary

²⁹ U.S. Department of Housing and Urban Development, The 2024 Annual Homelessness Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimates of Homelessness, State-Level Data Tables (2024) (reporting Colorado family homelessness increased from 4,878 to 8,519 people between January 2023 and January 2024, a 134 percent increase); Colorado Homeless Management Information System, 2024 State of Homelessness Report (2025), <https://www.cohmis.org/soh2024> (reporting 52,806 people sought housing and homelessness services through state partner agencies in 2024).

³⁰ 5 U.S.C. § 706(2)(A).

³¹ Regulatory Impact Analysis at 34.

³² Brennan Center for Justice, "Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available" (June 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>; see also Proposed Rule, 91 Fed. Reg. at 8159.

³³ Proposed Rule, 91 Fed. Reg. at 8152 n.14.

³⁴ Regulatory Impact Analysis at 12 (citing Chetty et al. (2016)); *id.* at 13 n.26.

verification tool for millions of Americans while acknowledging in the same document that SAVE cannot currently process the most common citizenship documents, carries a known error rate, and is already facing active litigation.³⁵

Finally, HUD failed to give serious consideration to regulatory alternatives before proceeding with a rule of this magnitude and cost. HUD's regulatory alternatives section identifies several options, including grandfathering existing mixed-status families and limiting the rule's application to families without children.³⁶ They also acknowledge that a less restrictive version of this rule would "avoid a conflict with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks," which requires federal agencies to assess policies that may disproportionately affect children's health and safety.³⁷

While none of these alternatives would adequately address the fundamental statutory and human rights concerns raised in this comment, HUD's brief dismissal of them in a few sentences, without meaningful comparative analysis, does not satisfy the requirement of reasoned decision-making. Given that HUD's own data show the number of mixed families in assisted housing has already been declining without this rule, the failure to seriously analyze less disruptive paths forward is particularly difficult to justify.³⁸

For these reasons, CCLP specifically requests that HUD, in any final rule, provide the following: a full analysis of the rule's projected impact on homelessness, including a quantitative estimate of the share of displaced families likely to experience homelessness and the downstream costs that displacement will impose on state and local governments; a clear explanation of why this rule better achieves its stated purpose than the alternatives identified in the regulatory alternatives section; a direct response to the statutory argument that the rule conflicts with Section 214's plain text requirement that financial assistance shall be made available on a prorated basis to mixed-status families, and an explanation of how eliminating prorated assistance is consistent with Congress's expressed intent to avoid the division of families; and a complete accounting of the costs this rule would impose on eligible US citizens and legal residents who lack ready access to documentary proof of citizenship and face the risk of wrongful denial through the SAVE verification system. Without these analyses, the rule cannot satisfy the requirements of reasoned decision-making under the Administrative Procedure Act and the standard articulated in *Motor Vehicle Manufacturers Association v. State Farm*.

Conclusion

This rule conflicts with the plain text and purpose of Section 214, causes severe and inadequately analyzed harm to the families it would displace, imposes burdensome verification requirements that will create barriers for eligible residents, dramatically understates the costs it would impose on state and local governments grappling with a worsening housing crisis, and fails the basic requirements of reasoned agency decision-making the Administrative Procedure Act requires. Additionally, HUD has not identified a genuine problem that this rule, at this cost, is necessary to solve. The mechanism it seeks to eliminate was designed by Congress intentionally, and the families it would displace are among the most vulnerable residents of an already deeply strained housing system.

³⁵ Proposed Rule, 91 Fed. Reg. at 8159.

³⁶ Regulatory Impact Analysis at 37.

³⁷ Regulatory Impact Analysis at 37 n.61; Exec. Order No. 13,045, 62 Fed. Reg. 19,885 (Apr. 21, 1997).

³⁸ Regulatory Impact Analysis at 10 (noting decline in mixed families from approximately 25,000 in 2017 to 20,000 in 2024).

For these reasons, CCLP urges HUD to withdraw this proposed rule in its entirety. If you have any questions, please contact Chris Nelson, Research and Policy Analyst at the Colorado Center on Law and Policy at 303-573-5669 ext. 307 or cnelson@copolicy.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Chris Nelson". The signature is written in a cursive style with a large initial "C" and "N".

Chris Nelson
Research and Policy Analyst
Colorado Center on Law and Policy