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U.S. Department of Housing and Urban Development
Via electronic submission

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

I write as Manhattan Borough President to submit formal comments in strong opposition to Proposed Rule FR-6524-P-01 (the "Proposed Rule"). I represent a borough of 1.6 million residents whose housing security depends on the continued operation of federal housing programs this Proposed Rule would fundamentally destabilize. This Proposed Rule would strip housing assistance away from thousands of New York City families and hundreds of Manhattan families without providing any benefit or cost savings to the federal government. If enacted, the Proposed Rule will force families to make the impossible choice of homelessness or family separation, displace U.S. citizen children from stable homes, convert private landlords into mandatory federal immigration informants, and impose billions of dollars in new costs on New York City with no federal reimbursement. I urge HUD to withdraw the Proposed Rule in its entirety.

I. Background: Current Law and What This Proposed Rule Would Change

Under Section 214 of the Housing and Community Development Act of 1980 and HUD's implementing regulations at 24 C.F.R. Part 5, Subpart E, federal housing assistance, including public housing and Section 8 vouchers, is limited to U.S. citizens and certain eligible non-citizens. However, mixed-status families—households that include both eligible and ineligible members—may live together in subsidized housing through a mechanism called prorated assistance. Under this system, only eligible members of the household receive a subsidy; other household members are required to contribute market-rate rent. Household members who do not want to report their immigration status may choose a "do not contend" option which automatically registers them as not claiming eligible status for housing subsidy and places their household into the prorated assistance system.

Notably, the prorated assistance is designed such that the federal government does not subsidize ineligible members of a household. Mixed-status families are not gaming a loophole; they are following the law exactly as Congress designed it.

The Proposed Rule would dismantle this framework in four important ways. First, households currently receiving prorated assistance with an ineligible member in the residence would lose assistance entirely. Second, the "do not contend" option would be eliminated, requiring every member to prove status through the USCIS SAVE system. Third, private Section 8 landlords, for the first time, would be mandated to report unlawfully present household members to DHS. Fourth, the Proposed Rule removes the existing definition of "other affordable housing", which strips away the substantive standard that currently limits when a deferral period can end.

HUD claims this Proposed Rule is responsive to section 2(a) of E.O. 14218 which mandates that the head of each Department "ensure that taxpayer-funded benefits exclude any ineligible alien." But under current law, "ineligible aliens" are not receiving taxpayer-funded benefits -- they are paying market-adjacent rent for their share of their own home. What the Proposed Rule eliminates is the right to live together as a family.

The human impact of these changes would be staggering. An estimated 11,000 New Yorkers would face eviction if this Proposed Rule is implemented, including approximately 5,000 children. In Manhattan alone, between 500 and 1,000 households, including over 1,000 children, would be directly impacted. For thousands of low-income families already living on the financial edge, this Proposed Rule would force an impossible choice between family separation and homelessness. For these families, there are no alternatives. The Section 8 waitlist is closed and NYCHA's public housing waitlist has been functionally closed for years.

II. The Proposed Rule Misrepresents the Legislative History of Section 214

HUD characterizes the prorated framework as a regulatory "loophole." I submit that it is not. Congress enacted it deliberately through the Housing and Community Development Act of 1987, Pub. L. No. 100-242, as a compromise that limited new ineligible applicants while refusing to break apart existing families. When the Reagan Administration attempted exactly this restriction through a 1986 rule, Congress blocked it, a federal court enjoined it on due process grounds, and HUD withdrew it. Congress then codified proration explicitly in the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208. HUD cannot now claim Section 214 has always required what Congress prevented and codified against. Most recently, in 2019, HUD proposed this

same rule but withdrew it after extraordinary public opposition, including a joint letter from twenty-three state Attorneys General. HUD's 2026 preamble does not acknowledge this extensive history.

III. The Proposed Rule Is Arbitrary and Capricious Under the APA

The APA requires courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This Proposed Rule fails that standard on several grounds.

First, the Proposed Rule would be a reversal of thirty years of established practice without reasoned explanation. Under *FCC v. Fox Television Stations*, an agency must display awareness that it is changing position and provide more detailed justification when prior policy has "engendered serious reliance interests." *Encino Motorcars, LLC v. Navarro* confirms that an "unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change." Tens of thousands of families have structured their housing and family composition in reliance on the prorated framework for thirty years. That is exactly the reliance interest these cases require HUD to address. And yet, HUD's 2026 preamble fails to do so.

Second, HUD's cost-benefit analysis is contradicted by its own data. HUD's January 2026 "Cleaning House" announcement cited an audit identifying 200,000 tenants as evidence of widespread abuse. The 200,000 figure reflects documentation discrepancies in a universe of 5 million households. Of those, HUD identified approximately 6,000 potentially ineligible non-citizens, 0.12% of all HUD-assisted tenants. The Proposed Rule's displacement of up to 80,000 people, including 37,000 U.S. citizen children, is clearly not justified by 6,000 potentially ineligible individuals. HUD's own letter to PHAs states: "Inclusion in the Report does not automatically mean that an individual is ineligible for HUD assistance." Using inflated figures publicly while burying the qualifying language is a selective use of evidence that courts have found renders agency action arbitrary and capricious.

Furthermore, HUD claims the Proposed Rule redirects $218 million to eligible households. Its own analyses show the opposite: prorated households pay market-adjacent rents that generate more revenue than fully subsidized households. Eliminating them thus reduces total families served and reduces net revenue to housing authorities. HUD's Regulatory Impact Analysis (RIA) concedes explicitly that the immediate effect would be a reduction in the number of households and eligible

persons assisted. An explanation that runs counter to the agency's own evidence is the paradigm case of arbitrary action under *State Farm*.

IV. Fiscal Impact on New York City and Manhattan

HUD's Regulatory Impact Analysis does not appropriately calculate the costs this Proposed Rule imposes on New York City and other municipalities. Those costs are significant and fall almost entirely on City taxpayers with zero federal reimbursement.

New York State, as one of the jurisdictions with the highest concentrations of mixed-status households receiving federal housing assistance in the country, would absorb an outsized share of this Proposed Rule's harm.

Manhattan's housing market is among the most expensive in the entire country. The borough's median monthly rent rose to $5,000 in February 2026--an all-time high, driven by historically low available rental inventory and a historically low vacancy rate. The idea that families displaced by this Proposed Rule could quickly find "other affordable housing" is not rooted in reality. Almost 3,000 New York City households in federally subsidized housing, including NYCHA public housing and Section 8, have members with mixed immigration statuses who would be directly impacted by this Proposed Rule. Over 11,000 people, including 5,000 children, would face displacement. In just Manhattan, between 500 and 1,000 households, including over 1,000 children could face displacement. As of 2025, the average Section 8 NYCHA household income is $23,231. These are not wealthy families with alternative housing options. They are the most vulnerable New York City residents who live on the margins of one of the most expensive housing markets in the country.

A. Lost revenue and new cost burden on NYCHA

HUD itself acknowledged in this Proposed Rule that "the most significant effect of this rulemaking would be to transfer assistance from mixed status families to fully eligible households." NYCHA currently collects higher effective rents from prorated mixed-status households than it would from fully subsidized replacement households, because ineligible members pay market-adjacent rates rather than 30% of income. Eliminating these households reduces NYCHA's net operating revenue at precisely the moment NYCHA faces an $80 billion capital deficit and an operating gap of $791 million. HUD's own 2019 Regulatory Impact Analysis found that replacing mixed-status households nationally would cost $372--$437 million annually because prorated tenants pay more than fully subsidized replacements. Applying New York's 13% share of affected

households implies an estimated $48--$57 million annual revenue loss to New York housing authorities.

The Proposed Rule also imposes on NYCHA mandatory SAVE enrollment, primary and secondary verification for all household members, updated HUD-50058 recordkeeping, and DHS reporting obligations, with no new funding. HUD's RIA characterizes this burden as "low" without providing any analysis. But every dollar and staff hour diverted to immigration compliance screening is a dollar and staff hour not spent on lead remediation, mold abatement, elevator repair, or heating system maintenance, life-safety obligations under NYCHA's existing federal consent agreement. Based on NYCHA's Manhattan portfolio of approximately 50,000 households, even one hour of staff time per household for initial verification processing represents millions of dollars in administrative cost at NYCHA's average hourly labor cost; again, with no corresponding federal reimbursement.

B. Emergency Shelter and Education Costs

HUD's projected local government cost estimates materially understate the real fiscal impact of the Proposed Rule. The Proposed Rule would trigger a surge in the homeless population, primarily in densely populated urban areas which are already confronting acute housing shortages and overextended shelter systems. Even using HUD's high-end projection of $30,000 per person annually, New York City alone would shoulder approximately $330 million in new costs, all without considering the long-term costs associated with physically building out shelter systems. The long-term floor for these costs is estimated to reach $114,975 per person annually. In effect, the Proposed Rule could impose approximately $1.27 billion in new annual shelter costs on New York City, all without federal reimbursement.

HUD claims these costs would be offset by newly available units being made available to currently unhoused New Yorkers. However, HUD's own analysis admits that only 10% of beneficiaries were formerly unhoused. It also doesn't consider the significant turnaround time to fill these vacancies; as of May 2025, NYCHA already had approximately 8,600 vacant units. In reality, most displaced households would represent net new demand on already overburdened shelter systems.

Furthermore, each displaced student triggers obligations for the New York City Department of Education under the McKinney-Vento Homeless Assistance Act: transportation to school of origin, priority enrollment, and additional support services. HUD's Regulatory Impact Analysis does not calculate or account for any of these costs.

V. This Proposed Rule Harms U.S. Citizen Children

Nationally, approximately 37,000 children, nearly all U.S. citizens, would lose housing assistance under this Proposed Rule. Over 1,000 of these children live in Manhattan. They were born here and attend Manhattan public schools. Under the current prorated system, their parents pay market-adjacent rent and receive no housing subsidy whatsoever. This Proposed Rule punishes U.S. citizen children for their family composition.

Peer-reviewed research is unambiguous on what housing displacement does to children. A Columbia University birth cohort study conducted specifically in Northern Manhattan and the South Bronx found significant associations between housing instability and behavioral problems at age seven, even after controlling for poverty. A 2025 study in AMIA Annual Symposium Proceedings found housing-unstable youth faced significantly higher odds of anxiety and depression and were substantially less likely to receive needed mental health treatment.

Families are already preemptively leaving HUD-assisted housing due to fear of immigration enforcement, even without any formal changes to eligibility rules. Today, across Manhattan's neighborhoods, families are making desperate calculations about whether staying in their apartments puts their family members at risk. HUD's Regulatory Impact Analysis does not account for this devastating impact.

Conclusion

Manhattan has a long and storied history as a borough of immigrants. The families targeted by the Proposed Rule are not exploiting a loophole; they receive only the prorated assistance to which eligible family members are legally entitled, under rules that have governed this program for decades. The current system was specifically designed to protect U.S. citizen children while ensuring that ineligible household members receive no direct subsidy. It is my contention that it is working as intended.

The Proposed Rule reverses thirty years of settled practice without reasoned explanation, misrepresents its own audit data, admits in its own Regulatory Impact Analysis that it will reduce families served, and fails to account for potentially billions of dollars in new costs and lost revenue imposed on New York City with no federal reimbursement. Each of these failures, independently, should render this Proposed Rule arbitrary and capricious.

The Proposed Rule should be recognized for what it truly aims to accomplish. Combined with the March 2025 HUD-DHS data-sharing MOU, it converts HUD, an agency whose statutory mission is to affirmatively further fair housing under 42 U.S.C. § 3535(d), into an instrument of immigration enforcement. That is not housing policy; rather, it is a repudiation of every principle that led Congress to create this agency in the first place.

Manhattan families deserve better from their federal government. I urge the agency to withdraw the Proposed Rule in its entirety and return HUD to its original mission administering housing programs that serve families, not police them.