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Submitted via www.regulations.gov

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U.S. Department of Housing and Urban Development
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Re: Comments on Proposed Rule: HUD Docket No. FR 6524; *Housing and Community Development Act of 1980: Verification of Eligible Status*, 91 Fed. Reg. 8151 (Feb. 20, 2026), RIN 2501-AE16

Dear Secretary Turner:

The Civil Rights Department (CRD) of the State of California writes in opposition to the Department of Housing and Urban Development's (HUD) proposed rule: *Housing and Community Development Act of 1980: Verification of Eligible Status*, 91 Fed. Reg. 8151 (Feb. 20, 2026) (Proposed Rule). CRD's comments incorporate and supplement the comments opposing the Proposed Rule that California Attorney General Rob Bonta has submitted on behalf of the State of California.

The Proposed Rule violates federal fair housing laws and would generate fundamental conflicts with California civil rights laws. It forces vulnerable Californians eligible for federal assistance to confront inhumane choices between evictions or family separations. And it imposes consequences that will impede CRD's—and other California agencies'—missions to advance fair housing. The Proposed Rule has already generated confusion and fear among families, including families with young children, and its adoption would magnify this impact. More broadly, the Administration's deep animus towards immigrants, particularly Latino immigrants—manifested in the Proposed Rule—is generating increased levels of discrimination against California tenants on national origin grounds. And this Proposed Rule is unnecessary to achieve HUD's stated goals, since HUD already pro-rates benefits to only provide support to family members who have confirmed their immigration status and does not provide benefits to those who are ineligible under federal law.

CRD urges that the Proposed Rule be withdrawn in its entirety, and that HUD's long-standing regulations remain in effect.

I. BACKGROUND

A. The Proposed Rule

HUD is proposing to change the regulations implementing Section 214 of the Housing and Community Development Act of 1980 (HCDA), 42 U.S.C. § 1436a (Section 214). Under HUD's current implementing regulations, 24 C.F.R. §§ 5.500-5.528, when households apply for federal public housing or financial assistance covered by section 214, each family member may either: (1) submit a declaration confirming that the individual is a citizen or eligible noncitizen,

or (2) choose not to contend that the individual has eligible immigration status by declining to submit a declaration confirming that status.[1]

The current regulations permit families to live together in federally subsidized housing even if not every family member has confirmed their eligibility status. These are known as "mixed-eligibility" families. HUD prorates the housing subsidy for mixed-eligibility families to provide benefits only for family members who have confirmed their eligibility.[2]

The Proposed Rule makes three significant changes to the existing system. *First*, it would require every household member, regardless of age,[3] to demonstrate their eligible immigration status.[4] *Second*, it would require Public Housing Authorities (PHAs) or private housing providers to notify the immigration authorities whenever they become aware that a household member is present in the United States in violation of the Immigration and Nationality Act.[5] *Third*, it would prohibit mixed-eligibility families from receiving prorated assistance from section 214 housing programs, including public housing and Section 8.[6]

HUD itself has described these changes as forcing a "ruthless" decision on mixed-eligibility families who receive prorated federal housing assistance.[7] These families must either

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[1] Being ineligible for federal housing assistance does not necessarily mean that someone lacks documentation of legal immigration status. 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 (TPS), and students on educational visas are legally present in the United States for immigration purposes but ineligible for federal housing subsidies. Under the Proposed Rule, having one of these documented immigrants in a household would disqualify the other household members from receiving federal housing assistance.

[2] 42 U.S.C. § 1436a(b)(2).

[3] Currently, individuals 62 years or older who claim eligible immigration status are exempted from the immigration status verification requirements. 42 U.S.C. § 1436a(d)(2). However, this Proposed Rule would require all applicants and tenants to submit evidence of U.S. citizenship or eligible immigration status regardless of age.

[4] Proposed Rule §§ 5.508, 5.216, 5.512, 5.518. Mixed-eligibility families would be required to demonstrate their eligibility within 90 days of the effective date of the Proposed Rule. Non-mixed-eligibility families would be required to demonstrate eligibility at their next recertification.

The Proposed Rule would also require household members who are U.S. citizens to provide additional verification and documentation of their citizenship status, including by submitting documentation such as a U.S. birth certificate, passport, or other documents. Obtaining supporting documentation can be costly, complicated, and time consuming. An estimated 3.8 million adult U.S. citizens lack any form of documentation proving citizenship, and another 17.5 million cannot readily access such documents. *See* Ctr. on Budget and Pol'y Priorities (CBPP), *Administration Plan Targeting Immigrants Would Take Away Rental Assistance, Create New Barriers* ("CBPP Mixed-Status Households Report") (Dec. 12, 2025), https://www.cbpp.org/research/housing/administration-plan-targeting-immigrants-would-take-away-rental-assistance-create.

[5] Proposed Rule §§ 5.508, 5.512.

[6] Proposed Rule § 5.506. Families that were receiving assistance under a Section 214-covered program on June 19, 1995 may be eligible for continued assistance. 24 CFR § 5.518. However, this will only have minimal impact, as only about 130 of 20,000 mixed-eligibility families are eligible for this continued assistance. *See* U.S. Dep't of Hous. & Urban Dev., Regulatory Impact Analysis, Housing and Community Development Act of 1980: Verification of Eligibility Status, at 43 (Sept. 30, 2025) (hereinafter "2025 RIA").

[7] Dep't of Hous. & Urban Dev., Regulatory Impact Analysis, Docket No. FR-6124-P-01, at 5–6 (Apr. 15, 2019) (hereinafter "2019 RIA"). Although HUD has issued a regulatory impact analysis with the current Proposed Rule

face eviction or the separation of an ineligible person from the household, even if that person is an immediate family member, and even if that family member would become homeless.[8] In addition, eligible individuals, including U.S. citizens, could lose their housing if they lack the new identification documents required under the Proposed Rule.

HUD's own analysis shows that this inhumane policy will not even advance HUD's asserted goal of making more housing assistance available for households that include only eligible tenants. To the contrary, HUD predicts that eliminating prorated subsidies for mixed-eligibility households will actually cause the number and quality of public housing units—as well as the services provided by housing authorities—to decline.[9] That is because the Proposed Rule, by HUD's own estimate, will require spending an additional $2,100 per household, which HUD anticipates will be paid for by reducing the number of households served by federal housing programs or by reducing the average spending on housing assistance.[10] Moreover, HUD's estimate fails to account for all the additional costs and diversion of resources, including those documented below and in the comments submitted by the California Attorney General.

B. CRD

CRD is the California department charged with enforcing the State's civil rights laws—including the Fair Employment and Housing Act (FEHA), Cal. Gov't Code § 12900 *et seq*., and the Unruh Civil Rights Act (Unruh Act), Cal. Civ. Code § 51—which protect and safeguard the right and opportunity of all persons to seek, obtain, and hold housing in California without discrimination.[11] CRD is empowered to bring civil actions to enforce these laws, both on behalf of the State and on behalf of groups, classes, and individuals subjected to discriminatory practices.[12]

CRD's work enforcing California's fair housing laws is intertwined with HUD's work enforcing the federal Fair Housing Act (FHA), 42 U.S.C. § 3201 *et seq*. Although CRD enforces California civil rights laws, which provide "greater rights and remedies" than federal laws, FEHA has many provisions that overlap with the FHA and other federal fair housing laws.[13] As a result, CRD routinely analyzes and applies federal fair housing laws and precedents in its work.

Further, under prior federal administrations, CRD has had a workshare agreement with HUD to investigate housing discrimination complaints. If a complaint regarding conduct in California were filed with HUD, it would typically be filed with CRD as well. In most cases,

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(see 2025 RIA), the Proposed Rule would, in many respects, have very similar impacts to the version HUD proposed in 2019; thus, HUD's 2019 regulatory impact analysis is cited herein where relevant to the current Proposed Rule.

[8] *See* 2025 RIA at 34–35, 45–46; *see also* 2019 RIA at 16. HUD acknowledges that the 2026 Proposed Rule may cause an increase in homelessness for members of mixed-eligibility families displaced as a result of the Rule.

[9] 2025 RIA at 14–18; 2019 RIA at 3.

[10] 2025 RIA at 15; 2019 RIA at 12.

[11] *See*, *e.g.*, Cal. Gov't Code §§ 12921, 12930.

[12] *Id.* at § 12965(a).

[13] *Id.* at § 12955.6.

HUD would send the complaint to CRD for investigation. If a complaint were filed with CRD and alleged facts that would have violated the FHA, the complaint could be "dual filed" with HUD, but CRD would still investigate it.

II. ANALYSIS

A. HUD's Proposed Rule Violates Federal Law and Creates Tensions with California's Civil Rights Laws

HUD's Proposed Rule both intentionally discriminates against and disparately impacts recipients of federal housing assistance because of their actual or perceived national origin—which is a protected class—or their association with someone in that protected class. As a result, it would violate federal law, including the FHA.[14]

The Proposed Rule would also create new legal obligations that would be in tension with existing obligations under federal and California fair housing laws for California state and local government agencies, as well as private housing providers. Like the federal FHA, liability under California's FEHA may be based on either intentional discrimination or the discriminatory impact of a defendant's actions.[15]

1. HUD's Proposed Rule Intentionally Discriminates Against Recipients of Federal Housing Assistance Because of Their National Origin

The FHA, FEHA, and the Unruh Act prohibit discrimination based on an individual's national origin.[16] National origin is defined as "the country where a person was born, or . . . from which his or her ancestors came."[17] There is substantial evidence that HUD's decision to propose this Rule was motivated by discriminatory intent against immigrants, particularly those from Latin America.

In determining whether an invidious discriminatory purpose motivated a government agency's housing policy decision, courts consider circumstantial and direct evidence of intent, including such factors as: (1) the effect of the official action on protected classes; (2) the historical background of the decision and relevant administrative history, including departures

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[14] 24 C.F.R. § 100.500(a) (HUD rule implementing disparate-impact standard); *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015) (*Inclusive Communities*) ("disparate-impact claims are cognizable under the Fair Housing Act"). While HUD has recently proposed rescinding its disparate-impact rule, *see* HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 91 Fed. Reg. 1475 (Jan. 14, 2026) (an action that CRD opposed in a comment letter, *see* Comment Submitted by Cal. Civ. Rights Dept. (Feb. 13, 2026) https://downloads.regulations.gov/HUD-2026-0034-0461/attachment_1.pdf), disparate impact remains a viable legal theory under federal and California law. (*See id.*, pp. 8-9.)

[15] 42 U.S.C. § 3604(a), (c), (f); Cal. Gov't Code §§ 12955(a), (b), (c), (d); 12927(c)(1); 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 class]").

[16] *See, e.g.,* Cal. Gov't Code §§ 12955(d), 12948. FEHA also affords greater rights and remedies to an aggrieved person than those afforded by the FHA, including by incorporating the Unruh Act's protection against discrimination on the basis of immigration or citizenship status. Cal. Gov't Code § 12955(d); Cal. Civ. Code § 51.

[17] *Espinoza v. Farah Mftg. Co.*, 414 U.S. 86, 88 (1973).

from normal procedures or substantive criteria; and (3) evidence of discriminatory animus, whether by the decision makers themselves or by those in positions to influence them.[18] Applying these factors here exposes the discriminatory intentions underlying the Proposed Rule.

2. HUD is proposing a rule known to have a disparate impact on Latino families

HUD is proposing to exclude mixed-eligibility families from receiving federal housing assistance despite the known disparate impacts this will have on Latino families.[19] Because "discrimination is not just another competing consideration,"[20] proposing a regulation "with full knowledge of the predictable effects . . . is one factor among many others which may be considered . . . in determining whether an inference of [discriminatory] intent should be drawn."[21]

HUD's own data shows that Latino households and individuals are disproportionately at risk of losing housing assistance.[22] The Proposed Rule will affect 898,550 Californians with its new verification processes and will threaten 7,190 mixed-eligibility households with termination from HUD programs, equating to 28,760 Californians at risk of eviction or family separation.[23] CRD has access only to HUD's national demographic data regarding individuals affected by the proposed new rule. But even this limited data shows the Proposed Rule's significant disparate impact on Latino individuals: They are over **24 times** more likely than non-Latino individuals to

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[18] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252, 266-268 (1977) (*Arlington Heights*); *see also* Cal. Gov't Code § 12955.8 ("A person intends to discriminate if [a protected category] is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence").

[19] 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." United States Census Bureau, Population, *About Hispanic Origin* (last updated Dec. 20, 2024) https://www.census.gov/topics/population/hispanic-origin/about.html.

[20] *Arlington Heights*, 429 U.S. at 265.

[21] *See, e.g., Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464-65 (1979) ("actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose" of a "segregative intent" [internal quotation marks omitted]); *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1162-1163 (9th Cir. 2013) (passing a zoning ordinance with knowledge of its known effect on group homes, and therefore people with disabilities, is evidence of discriminatory intent).

[22] *See CBPP Mixed-Status Households Report* at Tables 1 & 2 (listing HUD's demographic data for all individuals in HUD's largest housing assistance programs and for those individuals whose families must separate or lose housing assistance under the Proposed Rule).

[23] *See CBPP Mixed-Status Households Report* at Table 3 (listing HUD's demographic data by state for all individuals and households in HUD's largest housing assistance programs and for those "Mixed-status" households prohibited from receiving assistance under the Proposed Rule). Most mixed-eligibility households consist of three eligible members and one ineligible member. 2015 RIA at 8; *id*. at 4; 7,190 * 4 = 28,760.

be forced to either separate from their families or lose housing assistance.[24] Given California's demographics and disproportionate share of the mixed-eligibility households affected by the Proposed Rule, the disparate impact for Latino Californians is likely to be as significant or more so than for Latino individuals in the Nation as a whole.[25]

Despite this substantial evidence of the significant disparate impact on Latino individuals, HUD plans to proceed with the Proposed Rule. This in itself is significant evidence of a discriminatory purpose.[26]

3. The historical background and administrative history—particularly HUD's noncompliance with its legal obligations to prevent discrimination and affirmatively further fair housing—are evidence of a discriminatory motive behind the Proposed Rule

The Proposed Rule's historical background and administrative history include abundant evidence that HUD's decision was not motivated by legitimate policy concerns, providing further evidence of a discriminatory motive. California Attorney General Bonta's comments opposing the Proposed Rule discuss in detail how the Rule is arbitrary and capricious under the Administrative Procedure Act (APA), including HUD's failures to provide a reasoned explanations for changing the Rule and to develop facts, ascertain costs, and analyze effects of the Proposed Rule, as well as how the Proposed Rule conflicts with HUD's statutory authority under section 214 of the HCDA. Such procedural and substantive departures from the regulatory requirements that Congress has imposed on HUD can evince discriminatory intent.[27]

CRD agrees with the Attorney General's analysis and incorporates it in our comments, and will not repeat it here. Instead, we focus on HUD's duties under its enabling statute and the FHA to consider whether its proposed rules prevent discrimination and affirmatively further fair housing. In proposing the Rule, it failed to fulfill these duties.[28]

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[24] This odds ratio is calculated from the following HUD national data, as reported by the CBPP, *id.* at Table 1:

	Latino	Not Latino
Individuals forced to separate households or lose housing assistance	68,500	10,300
Total individuals in HUD's largest housing assistance programs	1,845,400	6,844,300

[25] *Id.* at Table 3.

[26] *See Columbus Bd. of Educ*., 443 U.S. at 464–65; *Pac. Shores Properties, LLC*, 730 F.3d at 1162–63.

[27] *See Arlington Heights*, 429 U.S. at 267.

[28] *See* 42 U.S.C. § 3608(e)(5) (HUD must administer its programs to affirmatively further policies underlying the Fair Housing Act). In a judicial forum, HUD's failure to follow these legal obligations could be actionable under, for

These duties lie at the core of HUD's mission[29] and statutory mandates.[30] Historically, HUD has incorporated its anti-discrimination obligations into its administrative rules. For example, the HCDA and FHA prohibit government agencies like HUD from discriminating in adopting housing-related rules and in administering housing services.[31] HUD has also previously recognized that "[a] requirement involving citizenship or immigration status" such as the Proposed Rule "will violate the [FHA] when it has the purpose or unjustified effect of discriminating on the basis of national origin."[32]

The FHA requires HUD to do more than just refrain from discriminating; the Secretary must "administer the programs and activities relating to housing and urban development in a manner affirmatively to further" the FHA's policies.[33] Like other FHA provisions, this duty to affirmatively further fair housing has appropriately been interpreted broadly to require HUD to promote fair housing and, more specifically, to work toward ending segregation in federal housing programs, including those covered by the Proposed Rule.[34] This duty imposes on HUD "at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase that supply."[35]

By failing to consider the substantial evidence of the Proposed Rule's disparate impacts on Latino families, including how it will "further limit the supply of genuinely open housing" for them, HUD has ignored its duty to assess whether the rule affirmatively furthers fair housing.[36] HUD's failure to abide by this essential duty in the Proposed Rule is a critical example of the

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example, the APA, FHA, and 42 U.S.C. § 1983. *See generally* Robert Schwemm, *Housing Discrimination Law and Litigation*, Thomas Reuters 2018 §§ 12B:7 (Who may be actionable under the Fair Housing Act--Government Defendants--Federal), 28:1–28:10 (The Fifth and Fourteenth Amendments: Due Process and Equal Protection [citing and discussing cases holding that HUD's violation of federal civil rights laws and the Fifth or Fourteenth Amendments may be redressed through suits brought under the APA, FHA, or section 1983]); *see also* 42 U.S.C. §§ 3603(b), 3607 (not including HUD or other federal agencies in lists of exemptions for liability under the FHA).

[29] "HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to . . . build inclusive and sustainable communities free from discrimination . . . ." HUD, *Multifamily Residents*, https://www.hud.gov/hud-partners/multifamily-residents#close (last visited Nov. 4, 2025).

[30] *See, e.g.*, 42 U.S.C. §§ 3604(a), (b), (f) (prohibitions on housing discrimination); 3608(e)(5) (requirements that HUD Secretary affirmatively further fair housing); 5309(a) (prohibitions on discrimination in HUD-funded programs and activities).

[31] *See, e.g.*, 42 U.S.C. §§ 3604(a), (b), (f); *see generally*, Schwemm, *supra* note 28 at § 21 (Federal Housing Programs and Affirmative Duties).

[32] *See* HUD Office of General Counsel, *Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency* at 3 (Sept. 15, 2016) ("HUD LEP Guidance") (internal quotation marks omitted).

[33] 42 U.S.C. § 3608(e)(5).

[34] *See* Schwemm, *supra* note 28 at § 21.1 (discussing HUD's duty under 42 U.S.C § 3608(e)(5) to affirmatively further fair housing and the legislative history of that duty).

[35] *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 156 (1st Cir. 1987).

[36] *Id*. HUD has also departed from its duty to consider whether the Proposed Rule affirmatively furthers fair housing by failing to consider the Rule's impacts on families with children and other protected classes. *See infra*.

current administration's broader abdication of this statutory duty.[37] Other examples include HUD's recent adoption of a requirement that PHAs verify the citizenship and immigration status of all individuals in public housing,[38] HUD's unprecedented refusal to administer funding to nonprofit organizations that conduct fair housing enforcement and education,[39] significant reductions in HUD's fair housing enforcement staff and capabilities,[40] HUD's proposal to repeal its disparate impact standard,[41] and HUD's MOU with the Department of Homeland Security (DHS) to target immigrants living in publicly subsidized housing.[42]

HUD's latest departure from its statutorily mandated requirement to affirmatively further fair housing—especially when coupled with the lack of reasoned explanations underlying HUD's actions, as discussed in the California Attorney General's comment letter—provides further evidence of the Proposed Rule's discriminatory purposes.[43]

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[37] On January 16, 2025, HUD withdrew the pending proposed rule titled "Affirmatively Furthering Fair Housing," which was published on February 9, 2023. 90 Fed. Reg. 4686 (Jan. 16, 2025). The State of California had strongly supported the 2023 proposed rule, which "strengthen[ed] HUD's ability to satisfy its statutory mandate . . . to affirmatively further fair housing . . . , and also reflect[ed] the agency's careful consideration of lessons learned from enforcing the AFFH mandate throughout the last several decades." Letter from Attorneys General of California, New Jersey and New York to HUD (Apr. 20, 2023), https://oag.ca.gov/system/files/attachments/press-docs/04-20-23%20Multistate%20Letter%20re%20HUD%20Fair%20Housing%20Rule.pdf.

[38] Benjamin R. Hobbs, Asst. Sec'y, Off. of Pub. & Indian Housing, *PHA Letter on EIV Report*, https://www.hud.gov/sites/default/files/PIH/documents/PHA-Letter-on-EIV-Report.pdf; the press release regarding this letter offensively referred to this effort as "cleaning house." HUD, *'Cleaning House': HUD Orders Immediate Citizenship Verification for All Tenants in HUD-Funded Housing Nationwide*, https://www.hud.gov/news/hud-no-26-008.

[39] *See Nat'l Fair Housing Alliance, et al. v. HUD, et al.*, No. 25-1965, 2025 WL 2105567 (D.D.C. July 28, 2025).

[40] *See* Debra Kamin, *Trump Appointees Roll Back Enforcement of Fair Housing Laws*, N.Y. Times (Sept. 22, 2025), https://www.nytimes.com/2025/09/22/realestate/trump-fair-housing-laws.html; Jesse Coburn, *How the Trump Administration Is Weakening the Enforcement of Fair Housing Laws*, ProPublica (May 15, 2025), https://www.propublica.org/article/trump-hud-weakening-enforcement-fair-housing-laws; Kriston Capps & Sarah Holder, *HUD Issues Layoff Notices, Targeting Fair Housing Staff With Deep Cuts* (Oct. 11, 2025), https://www.bloomberg.com/news/articles/2025-10-11/hud-issues-layoff-notices-targeting-fair-housing-staff-with-deep-cuts.

[41] *See supra* note 14. In addition to this proposed rule, HUD has prioritized intentional discrimination cases and withdrawn key civil rights guidance, contributing to weakening of the disparate impact standard and its enforcement. U.S. Dep't of Hous. & Urban Dev., *Fair Housing Act Enforcement and Prioritization of Resources* (Sept. 16, 2025), HUD-memo-Fair-Housing-Act-Enforcement-and-Prioritization-of-Resources-9.16.2025.pdf; U.S. Dep't of Hous. & Urban Dev., *The Office of Fair Housing and Equal Opportunity (FHEO) is announcing the withdrawal of several guidance documents* (Sept. 17, 2025), https://www.hud.gov/sites/dfiles/Main/documents/Notice-of-Withdrawal-of-Guidance-Documents.pdf.

[42] HUD and DHS, *Memorandum of Understanding Between U.S. Department of Homeland Security and U.S. Department of Housing and Urban Development* (Mar. 24, 2025), https://www.hud.gov/sites/dfiles/PA/documents/DHS-HUD-MOU-032425.pdf.

[43] *See Arlington Heights*, 429 U.S. at 266–68.

4. Extensive publicly available evidence shows that the Rule is driven by national-origin-based animus

This administration's public statements demonstrating ethnic- and national-origin-based animus and their connections to its anti-immigrant policies are well established in the public record.[44] HUD's Proposed Rule falls squarely within this context. Consistent with the federal administration's general implementation of anti-immigrant policies[45] and statements,[46] the Proposed Rule disproportionately targets Latino families without justification.

As discussed above, HUD's own experts confirmed that the 2019 iteration of the Rule—to which the Proposed Rule hews closely—will neither improve housing conditions nor increase the availability of housing assistance. Indeed, it will actively do harm in both areas, and that harm will fall disproportionately on protected classes.

Thus, the Proposed Rule is unlawful and will be subject to a meritorious court challenge, if adopted.[47] Administrative actions like this one that impact immigrants currently residing in the United States without any national security implications and amidst a documented pattern of

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[44] *See, e.g.*, *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1100 (N.D. Cal. 2018); *National TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 858–62 (N.D. Cal. 2025), *aff'd* 150 F.4th 1000 (9th Cir. 2025), *stay granted* sub nom. *Noem v. National TPS Alliance*, 145 S.Ct. 2728 (2025) (cataloguing statements by President Trump and Secretary of Homeland Security showing animus toward non-white immigrants).

[45] While too many to list here, the Administration has issued a number of anti-immigrant directives, including aggressively expanding interior immigration enforcement (e.g., the draconian deployment of immigration enforcement officers to Minnesota, which resulted in multiple fatalities; the rescission of a long-standing policy strictly limiting immigration enforcement actions in or near "sensitive" places like hospitals, schools, and religious sites; the expansion of workplace raids in industries that rely heavily on immigrant labor; and the extensive use of profiling based on race, ethnicity, and accent for immigration enforcement); issuing an executive order seeking to limit birthright citizenship for children of noncitizen parents; and terminating TPS, including for immigrants from Venezuela, Honduras, and Nicaragua. Executive Order 14159, *Protecting the American People Against Invasion* (Jan. 20, 2025), Executive Order 14165, *Securing Our Borders* (Jan. 20, 2025); *see* U.S. Department of Homeland Security, Memorandum for Enforcement Actions in or Near Public Areas (Jan. 20, 2025), https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf; *see also Vasquez Perdomo v. Noem,* 148 F.4th 656 (9th Cir. 2025) (addressing ICE raids and racial profiling); Executive Orders 14156, 14160, *Protecting the Meaning and Value of American Citizenship* (Jan. 20, 2025); *see, e.g.*, Termination of the 2021 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 43225 (Sept. 8, 2025).

[46] Again, there are too many examples to list here; as just one, President Trump stated in a 2025 Thanksgiving message that "most" foreign-born individuals "are on welfare, from failed nations, or from prisons, mental institutions, gangs, or drug cartels," "supported through massive payments from Patriotic American Citizens" and responsible for "murder[s], beat[ings], mugg[ings], . . . [f]ailed schools, high crime, urban decay, overcrowded hospitals, housing shortages, and large deficits." Donald J. Trump, TruthSocial (Nov. 27, 2025) https://truthsocial.com/@realDonaldTrump/posts/115625429081411360.

[47] *See National TPS Alliance*, 773 F. Supp. 3d at 855–867 (vacating DHS's termination of TPS for Venezuelan nationals and holding that discriminatory purpose was a motivating factor, in violation of the Equal Protection Clause, where the record showed discriminatory statements from Secretary Noem and President Trump targeting Venezuelan and other Southern-border immigrants; a history of targeting non-white, non-European TPS holders; DHS's unexplained departure from longstanding practice of obtaining interagency analysis before TPS decisions; a lack of evidentiary support for the decision; and a resulting disparate impact).

discriminatory animus will be difficult to defend on constitutional grounds.[48] And without any 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" its discriminatory purpose.[49]

B. HUD's Proposed Rule Disproportionately Impacts Additional Protected Classes that Are Otherwise Eligible for Public Housing Assistance

Liability may be established under the FHA, as well as FEHA, based on a practice's discriminatory effect.[50] "Discriminatory effect" describes a practice or policy—here, the Proposed Rule—that actually or predictably causes discrimination.[51] A practice or policy has a discriminatory effect where it causes a disparate impact on a protected class or creates, increases, reinforces, or perpetuates segregated housing patterns.[52] 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.[53]

Individuals' immigration status does not determine whether they can bring disparate impact claims or establish liability under the FHA.[54] For example, regardless of tenants' immigration statuses, requiring them to document their citizenship or lawful immigration status before renewing their leases has been found to violate the FHA when it has a disparate impact on a protected class and lacks a legally sufficient justification.[55]

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[48] *Id.*; *see also Trump v. Hawaii*, 585 U.S. 667 (2018); *Ramos*, 336 F. Supp. 3d at 1105–08.

[49] *Ramos*, 336 F. Supp. 3d at 1108 (quoting *Trump v. Hawaii*, 138 S. Ct. at 2420).

[50] 42 U.S.C. § 3604; 24 C.F.R. § 100.500; *Inclusive Communities*, 576 U.S. at 545; *Gamble v. City of Escondido*,104 F.3d 300, 306 (9th Cir. 1997); *Sisemore*, 151 Cal. App. 4th at 1423.

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

[52] 42 U.S.C. § 3604; 24 C.F.R. § 100.500; *see also Inclusive Communities*, 576 U.S. at 540; *see also Pfaff*, 88 F.3d at 746.

[53] 24 C.F.R. § 100.500; *see also Inclusive Communities*, 576 U.S. at 541 (approving of exception for policies "necessary to achieve a valid interest"); *Budnick v. Town of Carefree*, 518 F.3d 1109, 1118 (9th Cir. 1997) ("A defendant may rebut a plaintiff's proof of disparate impact by supply[ing] a legally sufficient, nondiscriminatory reason") (internal quotation marks omitted). FEHA specifically requires a defendant to show that its justification is "sufficiently compelling to override the discriminatory effect" and that its policy "effectively carries out" the need or purpose it allegedly serves. Cal. Gov't Code § 12955.8(b).

[54] *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 431-32 (4th Cir. 2018), *cert. denied*, 587 U.S. 987 (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"); *see also* HUD LEP Guidance at 3 ("A requirement involving citizenship or immigration status will violate the [FHA] when it has the purpose or unjustified effect of discriminating on the basis of national origin") (internal quotation marks omitted).

[55] *Reyes*, 903 F.3d at 428, 432.

Based on analysis of the data that HUD has made publicly available, the Proposed Rule's discriminatory impacts are significant for not only Latino households, as discussed above, but for other protected classes. Most prominently, families with children will disproportionately face harm from the Proposed Rule. According to HUD's 2025 analysis of the Proposed Rule, 73 percent of the households potentially harmed include families with eligible children.[56] And HUD's national data shows that children under 18 are 1.5 times more likely than adults to be harmed by the Proposed Rule.[57] Individuals with disabilities may also face disproportionate harm.[58]

The Proposed Rule will also create disparate impacts by requiring that *all* household members of all ages, including U.S. citizens, submit to new verification procedures. If eligible individuals do not timely submit the required documentation, they will lose their subsidies. Significant numbers of senior citizens, citizens of color, citizens with disabilities, transgender citizens, and citizens with low incomes may be disproportionally affected.[59]

Despite these significant impacts on protected classes, HUD has made no showing that the Proposed Rule is necessary to achieve any substantial, legitimate, nondiscriminatory interests. And HUD's purported rationale for the Proposed Rule—ensuring housing assistance is available for only eligible individuals—is already satisfied by the status quo. Under the current rule, HUD prorates benefits for those who do not confirm they are eligible to receive those benefits, which already ensures that only eligible individuals in a household receive housing assistance. Also, compared to the current rule, HUD has found that the Proposed Rule will reduce the quantity and

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[56] 2025 RIA at 46.

[57] This odds ratio is calculated from the following HUD national data, as reported in the *CBPP Mixed-Status Households Report* at Tables 1 and 2:

	Children under 18	Adults 18 and over
Individuals forced to separate families or lose housing assistance	36,900	42,700
Total Individuals in HUD's largest housing assistance programs	3,109,600	5,709,900

[58] *See* Cal. Dep't of Hous. and Community Devel., *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").

[59] *See* Jillian Andres Rothschild, et al., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*" Ctr. for Democracy and Civic Engagement (June 2024) https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%20survey%20Key%20Results%20June%202024.pdf; Movement Advancement Project, *The ID Divide: How Barriers to ID Impact Different Communities and Affect Us All* (Nov. 2022) https://www.mapresearch.org/file/MAP-Identity-Documents-report-2022.pdf.

quality of federal housing assistance. HUD's pretextual justifications are undermined by HUD's own analysis, and further undermined by the Administration's history of animus toward immigrant groups.[60]

HUD also fails to consider alternatives that could serve its interests with less discriminatory effects.[61] In fact, HUD has briefly acknowledged in both its 2025 and 2019 analyses that there is an alternative that would achieve a similar objective of removing ineligible households but avoid the transition costs of removing and replacing mixed-eligibility families; namely, "grandfathering" in the existing mixed-eligibility families and applying the provisions of the proposed rule to new admissions only. Such a gradual option would fulfill the objectives of the rule and avoid the transition costs borne by mixed-eligibility families, i.e., moving costs and the indirect costs associated with the housing insecurity of the families whose housing assistance is terminated.[62] HUD, however, does not meaningfully address this alternative. HUD's 2025 and 2019 regulatory impact analyses are both woefully inadequate in considering alternatives.

III. HUD Failed to Analyze Federalism Impacts or Consider Costs to California Agencies and Programs, Including the Proposed Rule's Impacts on CRD

Executive Order 13132, issued in 1999, establishes certain requirements that a federal agency must meet when it proposes a rule that would have substantial direct effects on the States; impose substantial direct compliance costs on state and local governments; or have 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 nor preempt state law."[63] This conclusion is erroneous, as shown in Attorney General Bonta's comments, which detail how the Proposed Rule will significantly undermine many California policies and programs and will impose substantial costs on California state and local agencies.

To supplement the Attorney General's comments, CRD provides additional analysis of how the Proposed Rule will conflict with California civil rights laws; impose additional costs on,

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[60] *See Inclusive Communities*, 576 U.S. at 521 (noting that disparate impact claim "permits plaintiffs to counteract . . . disguised animus").

[61] As discussed at length in the Attorney General's letter, the existing regulation reflects the statutory requirements of Section 214; thus, this discussion assumes for purposes of argument that HUD could deviate from those statutory mandates.

[62] 2025 RIA at 37 ("over time, mixed families would be replaced based on existing end-of-participation trends. With a turnover rate of 10 percent, the number of mixed families would naturally be halved within 7 years"); 2019 RIA at 17 (similar); *see also 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 for plaintiffs to avoid summary judgment); *Gallagher v. Magner*, 619 F.3d 823, 837–88 (8th Cir. 2010) (plaintiffs' alternative sufficed to survive summary judgment); *Fair Hous. 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).

[63] Proposed Rule, 91 Fed. Reg. at 8163.

and divert resources, from CRD; and further exacerbate discriminatory housing practices incited by this Administration's anti-immigrant policies and rhetoric.

California's FEHA and Unruh Act prohibit housing discrimination against the same classes of persons protected by federal civil rights laws; they also specifically prohibit discrimination based on immigration and citizenship status, which are among the additional classes protected by the "greater rights and remedies" that California law provides as compared to the FHA and other federal civil rights laws.[64] In addition, California law includes its own provisions requiring all state and local agencies to administer their "programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with [their] obligations to affirmatively further fair housing."[65]

HUD's existing section 214 regulations avoided conflicts with these and other provisions of California law by allowing a family member in mixed-eligibility families to decline to confirm eligible status, while providing for public housing authorities and other federal housing assistance providers to prorate such families' benefits. Disrupting that harmony, the Proposed Rule would conflict with state law while increasing housing discrimination in at least five ways:

First, the Proposed Rule will be in tension with express prohibitions in both FEHA and the Unruh Act against discrimination on the basis of actual or perceived immigration status, citizenship, and national origin.[66] While the Unruh Act exempts parties from liability when federal law requires them to verify immigration status,[67] the 2026 Proposed Rule will still place many California housing providers in a moral and ethical bind, forcing them to go against California's clearly enunciated policy to protect "against discrimination based on immigration status, whether occurring directly or used as a pretext for national origin discrimination."[68] Conversely, the 2026 Proposed Rule could provide a pretext for other housing providers to violate California's laws, as they may claim to be enforcing HUD's new requirements while actually profiling households for adverse treatment based on their actual or perceived race, ethnicity, and/or national origin.[69]

Second, by forcing eligible family members to face a choice between eviction or separating from ineligible members, the Proposed Rule will conflict with FEHA and the Unruh Act's

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[64] *See, e.g.,* Cal. Gov't Code §§ 12955(d), 12955.6; Cal. Civil Code § 51.

[65] *See, e.g.,* Cal. Gov't Code §§ 8899.50(a), 65583.

[66] Cal. Gov't Code § 12955(d), Cal. Civ. Code § 51(b); *see also* N.Y. Executive Law § 296 (similar).

[67] Cal. Civ. Code § 51(g) ("Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section"). Note that courts have not defined this exemption's scope; for example, "this section" refers to the Unruh Act, and thus arguably would not apply to the FEHA provision (Cal. Gov't. Code § 12955(d)) that references the list of protected characteristics from the Unruh Act (Cal. Civ. Code § 51(b)).

[68] Cal. S. Bill No. 600 (2015-2016 Reg. Sess.), Assem. Floor Analysis, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB600#.

[69] *Cf. Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270, 277 (4th Cir.), *cert. denied*, 145 S. Ct. 172 (2024) (rejecting landlord's improper attempt to invoke anti-harboring statute as the basis for its policy of requiring tenants to verify their legal status).

prohibition of discrimination based on an individual's association with other persons who are within a protected class.[70] The Rule could, for example, force eligible children to lose housing or separate from their families because of their association with a parent with a particular immigration status, citizenship, or national origin.

Third, the Proposed Rule will have disparate impacts on several classes protected by FEHA and the Unruh Act, including significant impacts based on national origin, immigration/citizenship status, familial status, and age.

Fourth, the Proposed Rule will likely exacerbate national origin discrimination violations of FEHA and the Unruh Act. CRD has received a number of complaints since mid-2025 about landlords who have reported or threatened to report their tenants to immigration authorities for illegitimate purposes. For example, according to complaints filed with CRD:

- In one case, during eviction proceedings, the property owner attempted to coerce a co-tenant to obtain information about the complainant's immigration status by threatening the cotenant, claiming they could be harboring a criminal if the complainant was undocumented. The property owner entered the complainant's room and took personal belongings, including immigration documents. After the complainant filed a complaint with CRD, the property owner intercepted a U-Visa Certification sent by the Department. The owner and an affiliate used this document to coerce the complainant to leave the property, and the complainant was subsequently detained by federal immigration authorities and incarcerated at an immigration detention center.

- In another case, the property manager discriminated against and harassed three different tenant households based on her perception that these individuals lacked legal immigration status. The property manager's discriminatory conduct began with derogatory statements about the tenants' immigration status, and her forcing them to clean other units or the common areas at the apartment complexes but refusing to pay them because of their immigration status. This unlawful conduct intensified in response to tenant complaints or issues with rent payments, which were higher than the tenants had negotiated for. When tenants complained about this or could no longer pay the unfair rent, the property manager threatened to inform ICE regarding their immigration status or told them that ICE was in the vicinity. She also posted sham notices from ICE about tenants in the common areas and outside the main entrance; the notices stated that the tenants were "thieves," falsely claimed that they had moved out without paying, and stated that they were being reported to various agencies. The sham notices also included images of tenants' national identification cards.

Studies indicate that such discrimination has increased, at least in part, due to the federal administration's hostile language and policies toward immigrants. For example, 36 percent of immigrants surveyed stated that President Trump's derogatory rhetoric about immigrants has had

[70] *See* Cal. Gov't Code § 12926(o)(3); Cal. Civ. Code, § 51(e)(7).

a negative effect on how they are treated,[71] and almost 4 in 10 report discrimination in housing or other settings.[72] CRD's records indicate that complaints about national origin discrimination in housing increased 50 percent during the seven months following President Trump's 2025 inauguration compared with the same seven months under the prior administration.[73]

Fifth, in addition to potentially increasing discrimination, the Rule will confuse private landlords about how to meet their obligations under California law. While California law currently prohibits discrimination against people using Section 8 vouchers,[74] discrimination based on source of income remains widespread,[75] as does landlords' lack of understanding of their legal obligations.[76] The Rule is likely to result in lack of certainty regarding compliance, thereby causing landlords to be even more hesitant to rent to voucher holders.

As a result, CRD is evaluating and preparing measures to mitigate these negative impacts. Such measures include the modification and the creation of additional educational materials for tenants, landlords, and the general public to alert them about the Rule and its implications. CRD will also need to devote additional resources to its fair housing testing program and public education and outreach efforts with impacted groups to counteract any adverse effects on CRD's ability to achieve its statutory mission to prevent, remedy, and deter discrimination statewide.

HUD has failed to consider any of the Proposed Rule's consequences and costs for CRD and other California state and local agencies.[77] These consequences and costs will divert

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[71] Mollyann Brodie, Kaiser Family Found., *How Campaign Rhetoric Harms Immigrants* (Sept. 27, 2024) https://www.kff.org/immigrant-health/misinformation-about-immigrants-in-the-2024-presidential-election/.

[72] Shannon Schumacher, et al., Kaiser Family Found., *Understanding the U.S. Immigrant Experience: The 2023 KFF/LA Times Survey of Immigrants* (Sept. 17, 2023) https://www.kff.org/racial-equity-and-health-policy/kff-la-times-survey-of-immigrants/#d53efe98-31a4-48f1-944f-b1b1aff36c06.

[73] Internal report from CRD's California Civil Rights System showing 28 national origin discrimination complaints from February to August 2024 under prior Administration, and 42 in same period in 2025, immediately after current Administration assumed office.

[74] Cal. Gov't Code §§ 12921(b), 12955(d); Cal. Code Regs., tit. 2, § 12141.

[75] CRD-sponsored fair housing testing in two large Southern California counties in 2024 showed evidence of discrimination against families using Section 8 vouchers in more than half of the properties tested. CRD, *During Fair Housing Month, Civil Rights Department Shares New Data on Housing Discrimination in Southern California* (Apr. 17, 2025) https://calcivilrights.ca.gov/2025/04/17/during-fair-housing-month-civil-rights-department-shares-new-data-on-housing-discrimination-in-southern-california/.

[76] Shazia Manji, U. of Cal.-Berkely, Terner Center, *What Small Multifamily Rental Property Owners Tell Us About Implementation of Tenant Protection Laws* (May 10, 2024) https://ternercenter.berkeley.edu/research-and-policy/small-property-owners-tenant-protections/#:~:text=Only%20half%20(52%20percent)%20of,in%20different%20cities%20and%20states (showing that almost half of landlords surveyed in California were not aware of state laws prohibiting source of income discrimination; among those landlords, 44 percent said they would not rent to a Section 8 recipient).

[77] As discussed in Attorney General Bonta's comment letter, the other state agencies include California's Department of Housing and Community Development and Department of Social Services. Local California jurisdictions affected include municipal public housing authorities and other local agencies or boards that administer federal housing programs, as well as cities, counties and school districts that would bear the costs of increased homelessness.

resources that these agencies could have expended on redressing housing discrimination, providing housing services, and affirmatively furthering fair housing. HUD's failure to consider all of these negative consequences breaches its duty to analyze the Proposed Rule's federalism impacts and assess the costs that it imposes on state agencies and programs.[78]

IV. CONCLUSION

The Proposed Rule is unlawful under both intentional discrimination and disparate impact analyses, will harm some of California's most vulnerable households, and will impede CRD's and other California agencies' missions to end housing discrimination. It represents a glaring example of HUD's failure to abide by its duty under the FHA to administer housing programs in ways that "mov[e] the Nation toward a more integrated society."[79]

CRD opposes the Proposed Rule and urges HUD to withdraw it in its entirety.

Sincerely,

KEVIN KISH
Director
California Civil Rights Department

[78] In addition, this failure to consider the impacts on CRD and other California agencies is more evidence of how HUD has departed from its statutorily mandated requirement to consider whether the Proposed Rule affirmatively furthers fair housing. *See supra*.

[79] *Inclusive Communities*, 576 U.S. 519 at 547.