

July 8, 2019
BY POSTING TO FEDERAL eRULEMAKING PORTAL
IN WORD AND pdf

Federal eRulemaking Portal: www.regulations.gov.

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10267
Washington, DC 20410-0500

Re: HUD Docket No. FR-6124-P-01. RIN 2501-AD89.

To the Department of Housing and Urban Development:

These Comments concern changes to Mixed Status Families Rules proposed by HUD. My Comments break down into a number of concrete areas, identified below.

1. The origin of your proposed Rules changes is irrational. I understand that HUD's proposed Mixed Status Families Rules changes were not written or researched by HUD. They were written by a current employee of the White House, Mr. Stephen Miller, who has parenthetically not been appointed to any position in the federal government. Mr. Miller's proposals were shown to HUD Secretary Benjamin Carson, who I understand did not like them but neither did he oppose them.

The origin story of these changes exponentially increases the chances that a Court will find the changes irrational. As noted below, there are other reasons that your proposed changes are irrational. My first point is that, whether taken separately or together with the other reasons discussed below, a Court is more likely than not to hold that your proposed changes are irrational and even "contrived," to borrow a word from Chief Justice Robert's recent opinion on proposed rules changes to the United States Census.

2. Millions of dollars will be lost to HUD if your proposed Rules changes are finalized because undocumented immigrants are among the most reliable tenants HUD has. The current status of the law is that so long as one member of a family is a citizen of the United States, the family is entitled to HUD housing as I understand it. Your proposed Rules changes would stand the law on its head. Mr. Miller's proposal would be to deny HUD housing to anyone in a family who is not a citizen or is an undocumented immigrant, leaving behind the person(s) in that family who are U.S. citizens, mostly children.

"The primary cost would be the economic costs of moving." HUD's Regulatory Impact Analysis ("RIA") of these proposed rules changes, Docket No. FR-6124-P-01, at 13 (April 15, 2019). HUD's Regulatory Impact Analysis does not come out and say so, but the moving costs estimated by HUD at between \$9,500,000 and \$13,000,000 would be borne by the mixed families assuming that they could come up with that amount of money.

A secondary but inevitable cost would be formal eviction. HUD would bear the costs of formal eviction. HUD estimates its costs for formally evicting families under the proposed Mixed Status Families rules as between \$3,300,000 and \$4,400,000, or between \$3.3 Million and \$4.4 Million. RIA, Docket No. FR-6124-P-01, at 4 and 15 (April 15, 2019).

HUD PUBLIC HOUSING AID CHANGES REGARDING UNDOCUMENTED IMMIGRANTS (“MIXED STATUS FAMILIES RULES”):

Comments to HUD Proposed Rules Changes 07.08.19.

Page 2 of 3

Any parent knows that most children will follow their evicted parents. As HUD’s own Regulatory Impact Analysis crudely put it, “Most ineligibles live in small households that could not easily separate.” RIA, Docket No. FR-6124-P-01, at 16 (April 15, 2019).

That means that inevitably HUD will lose these people as tenants. Putting to one side the moral and ethical failures of such changes, the loss of these families as tenants would be an economic catastrophe.

Undocumented immigrants are among the most reliable tenants that HUD has. They do not want to attract the attention that would come their way if they do not pay their rent on time. It would be irrational to evict them or otherwise force them to move out of the HUD housing on which they currently and faithfully pay rent. Their rent payments total millions of dollars, all of which would be lost to HUD and the federal taxpayer. This result is not rational. The proposed changes under consideration do not serve any other purpose which is itself either rational or desirable.

3. Replacing these mixed immigration households that would be displaced if the Rules changes are finalized would cost HUD millions of dollars excluding even lost rental monies. HUD would be required to pay full subsidies for each resident that would be left in a household in subsidized public housing. Under the law, the amount of subsidies is prorated according to the number of undocumented immigrants (no subsidy) vs. the number of legal residents (subsidized). If these proposed changes were made, the costs to HUD would then be in the millions of dollars because HUD would be paying direct subsidies calculated by each individual person that remains in HUD housing. There would be no prorating HUD’s payments then.

HUD published its own “Summary of Transfers” Table to show the total estimated costs of replacing mixed status families currently receiving HUD housing assistance (subsidies), with households in which every single individual is eligible for HUD housing assistance, at \$372 Million “annually” (without saying for how long these “annual” costs would continue) as a “Low Estimate,” and \$437 Million “annual” costs as a “High Estimate.” In other words, in just the first year the costs of these proposed Rules changes are estimated by HUD to run between \$372 Million and \$437 Million. HUD RIA, Docket No. FR-6124-P-01, at 11 (April 15, 2019).

No telling how many years such “annual” costs or any “annual” costs like them would continue if the proposed Mixed Status Families rules changes are finalized and adopted.

And for what return on this expense? This too is another reason that the proposed Rules changes are irrational. They are almost certain to be found irrational by a Court as soon as they are challenged in litigation. Knowing that up front, so to speak, what reason can HUD give for pursuing these proposed changes and incurring these certain expenses?

If there is a good reason, I have not heard it.

Conclusion

The fact that HUD did not write or research the proposed rules changes in question is an untreatable wound to the viability of the Mixed Status Families rules changes. The fact that these proposals were presented to HUD by political employee(s) without HUD’s involvement and without HUD’s intervention, but only with HUD’s acquiescence in their false presentation of “contrived” reasons for their adoption, is fatal to their implementation as law in the United States.

HUD PUBLIC HOUSING AID CHANGES REGARDING UNDOCUMENTED IMMIGRANTS (“MIXED STATUS FAMILIES RULES”):

Comments to HUD Proposed Rules Changes 07.08.19.

Page 3 of 3

Further, finalization and adoption of these proposals will result in the loss of millions of dollars of rental payments to HUD with no offsetting benefits whatsoever.

Finally, additional “annual” costs will accrue to HUD by HUD’s own best estimates over an unstated period of time, if these proposed Rules changes are finalized and adopted, somewhere between \$372 Million and \$437 Million a year.

Whether these considerations are taken separately or together, they require HUD to withdraw the proposed Mixed Status Families rules changes or suffer certain judicial rulings striking them down as what they are, “contrived.”

Instead, HUD itself has proposed alternatives. Some of them are rational. *See* RIA, Docket No. FR-6124-P-01, at 17, in paragraph titled, “Alternatives” (April 15, 2019). Consider them instead, even as you withdraw the current proposed rules changes.

Thank you for your consideration.

Sincerely Yours,

Dennis J. Wall, Esquire

Dennis J. Wall