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April 21, 2026

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

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

Dear Office of the General Counsel, Regulations Division:

MALDEF ("Mexican American Legal Defense and Educational Fund") submits this public comment to urge the Department of Housing and Urban Development ("HUD") to rescind its February 20, 2026 Notice of Proposed Rulemaking found at 91 Fed. Reg. 8151 ("NPRM"), which effectively ends mixed-status families' ability to receive financial assistance under HUD programming. Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Described as the "law firm of the Latino community," MALDEF promotes social change in the areas of immigrant rights, employment, education, voting rights, and freedom from open racial bias.

HUD claims that the NPRM's changes are necessary to direct its limited resources exclusively to citizens, nationals, and eligible noncitizens.[1] But HUD has already done so by prorating assistance to mixed-status families to ensure that it provides funding only for the eligible residents of the household.[2]

Rather than prevent ineligible noncitizens from receiving HUD assistance, the NPRM singles out and punishes select citizens, nationals, and eligible noncitizens—preventing them from receiving the financial assistance they rely upon, if they choose to live with an ineligible noncitizen.[3] Most of the eligible individuals the NPRM punishes are children—making up two-thirds of all eligible members in mixed-status families.[4] And because the Latino community has the highest rate of

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[1] *See* NPRM at 8151.
[2] 24 C.F.R. § 5.508(a), (e).
[3] NPRM at 8155-56.
[4] HUD, *Regulatory Impact Analysis for Housing and Community Development Act of 1980: Verification of Eligibility Status* at 8 (Jan. 28, 2026), available at Regulations.gov (Docket No. FR-6524-P-01) ("RIA").

citizens and legal immigrants living in mixed-status households, these changes will disproportionally harm the community and its children.[5]

For these reasons, and because the NPRM is inconsistent with HUD's organic statute, may violate the anti-commandeering doctrine, and is, in myriad ways, arbitrary and capricious in violation of the Administrative Procedure Act ("APA"), HUD must rescind the NPRM and keep the current procedural regime in place.

I. Background

a. Current Regulatory Framework[6]

Mixed-status families—that is, families consisting of citizens, nationals, and certain eligible noncitizens who live with at least one ineligible noncitizen—may receive long-term HUD housing assistance.[7] Assistance for such families is prorated based on the ratio of eligible citizens, nationals, and noncitizens to the total number of household members.[8] To receive assistance, a mixed-status household must apply for HUD assistance together.[9] Those in the family who "contend" eligibility must verify their status to receive benefits.[10] The remainder of the household may invoke the "do not contend" provision, authorizing those individuals to formally decline establishing their eligibility for benefits.[11] HUD's organic statute provides for prorated benefits under these circumstances because "the eligibility for financial assistance of at least one member of a family [is] affirmatively established …, and the ineligibility of one or more family members has not been affirmatively established[.]"[12]

To establish eligibility for assistance, citizens and nationals must submit a signed declaration of their status.[13] The responsible entity[14] has discretion to request documents proving citizenship, as specified in HUD guidance.[15] The evidence required from eligible noncitizens depends on their age. If the noncitizen is 62 or older, they must submit a signed declaration of their status and proof of age document.[16] All other noncitizens must submit a signed declaration of their status, proof of immigration status, and a signed verification consent form.[17] The verification consent form must indicate "that evidence of eligible

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[5] *See* Cal. Immigr. Data Portal, *Mixed Status Families*, https://immigrantdataca.org/indicators/mixed-status-families?breakdown=by-race (last visited Mar. 30, 2026).
[6] This Comment only reviews provisions of the current and proposed regulatory frameworks as they are relevant to the arguments raised in the Comment.
[7] 24 C.F.R. §§ 5.508(a), (e); 5.520(a).
[8] *See id.* at § 5.520.
[9] *See id.* at § 5.508(a).
[10] *See id.* at § 5.508.
[11] *Id.* at § 5.508(e).
[12] 42 U.S.C. § 1436a(b)(2).
[13] 24 C.F.R. § 5.508(b)(1).
[14] *Id.* at § 5.504(b) ("Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status.")
[15] *Id.* at § 5.508(b)(1)
[16] *Id.* at § 5.508(b)(2).
[17] *Id.* at § 5.508(b)(3)

immigration status may be released by the responsible entity without responsibility for the further use or transmission" to: (1) HUD, as required by HUD; and (2) DHS, for the purpose of verifying immigration status.[18] This form must also notify the applicant "of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible status shall only be released to the [DHS] for purposes of establishing eligibility for financial assistance and not for any other purpose."[19] If individuals do not establish eligibility via this verification process, they may appeal to USCIS, during which time assistance cannot be delayed, denied, reduced, or terminated.[20] After a decision from USCIS, or in lieu of an appeal to USCIS, an applicant may request an informal hearing with the responsible entity.[21]

Under current interagency guidance ("Interagency Notice") implementing the Personal Responsibility Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Housing Authorities ("PHAs") have some immigration-related reporting obligations.[22] At least four times a year, they must report to DHS the name, address, and other identifying information of an individual they know is not lawfully present in the United States.[23] A PHA only "knows" for purposes of this reporting requirement "when the unlawful presence is a finding of fact or conclusion of law that is made by the [PHA] as part of a formal determination that is subject to administrative review on the" claim for assistance, where a "[]SAVE[] response showing no [DHS] record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present."[24] That finding, moreover, "must be supported by a determination by [USCIS] or the Executive Office of Immigration Review, such as a Final Order of Deportation."[25]

b. Proposed Changes

HUD seeks to overhaul its regulations to deny assistance to mixed-status families.[26] To do so, the NPRM makes two important changes. First, it removes the "do not contend" provision from HUD regulations.[27] As a result, every member of an applicant household must contend eligibility. Second, it transforms prorated assistance into a temporary benefit: now available only during the eligibility verification process if at least one member establishes eligibility pending final verification of other household members'

[18] *Id.* at § 5.508(d)(2).
[19] *Id.* at § 5.508(d)(3).
[20] *Id.* at § 5.514(e) (authorizing an appeal to the INS); Letter from Benjamin R. Hobbs, HUD Office of Public and Indian Housing, to Public Housing Agencies, Citizenship and Immigration Status Verification (Jan. 23, 2026), *available at* https://www.hud.gov/sites/dfiles/PIH/documents/PHA-Letter-on-Citizenship-and-Immigration-Status-Verification.pdf (asserting that individuals may request a hearing with USCIS after a failing to establish status at the secondary verification stage).
[21] 24 C.F.R. § 5.514(f).
[22] Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States, 65 Fed. Reg. 58301, 58302 (Sept. 28, 2000) ("Interagency Notice").
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] NPRM at 8153.
[27] *Id.*

status.[28] This temporary benefit necessarily ends when: (1) the whole household establishes eligibility, at which point assistance is no longer prorated; or (2) at least one member of the household fails to establish eligibility at the final verification stage, at which point the entire family loses assistance.[29]

HUD is overhauling the verification process as well, requiring PHAs and owners to verify immigration status through DHS' Systematic Alien Verification for Entitlement System ("SAVE").[30] This process proceeds in two steps, "primary" and "secondary" verification.[31] At the primary verification stage, U.S. citizens and nationals, in addition to submitting a signed declaration of status, must now also sign a newly-overhauled verification consent form.[32] The NPRM then removes the bifurcated process for applicant noncitizens, requiring all such individuals, regardless of age, to provide a signed declaration of status, acceptable documentation establishing immigration status, and a signed verification consent form.[33]

If the SAVE system does not verify the applicant's status at this stage, the verification process proceeds to the "secondary" stage, where the applicant must submit documentation to prove their status.[34] When citizens and nationals submit proof, depending on the information provided, the responsible entity will resubmit the evidence through SAVE or manually review the applicant's evidence.[35] When noncitizens provide proof at this stage, responsible entities will use that information to resubmit the applicant through SAVE.[36]

The NPRM then eliminates the formal appeal process, deceptively claiming it is merely "remov[ing] the outdated INS appeal provision."[37] As a result, benefits may be denied or terminated upon failure to establish eligibility after the secondary verification process.[38] The informal hearing with the responsible entity is now the only available avenue for post-secondary verification review.[39]

The NPRM also makes changes to PRWORA reporting requirements. It concludes that owners must now comply with PRWORA.[40] At proposed section 5.508(e)(2)(vi), the NPRM requires PHAs and owners to provide notice to applicants that they must "immediately" report to DHS when personnel "determine" that an individual residing on the property is unlawfully present.[41] The NPRM further states that a proposed section 5.508(d)(4) will require a similar notice in the verification consent form—yet no such provision

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[28] *Id.*
[29] *Id.* at 8154.
[30] *Id.* at 8167.
[31] *Id.*
[32] *Id.* at 8165.
[33] *Id.* at 8167.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.* at 8160.
[38] *Id.*
[39] *Id.* at 8159-60.
[40] *Id.* at 8166.
[41] *Id.*

exists in the proposed regulations portion of the NPRM.[42] Proposed section 5.508(e)(2)(vi) provides that owners and PHAs may satisfy their reporting obligations by conforming with applicable Federal Register notices, including interagency notices, providing guidance for compliance with PRWORA.[43] But the governing Interagency Notice provides different timing and (possibly) knowledge requirements for PRWORA reporting than those that are described in these notices.[44]

II. Analysis

For the reasons discussed below, HUD lacks the statutory authority to end assistance to mixed-status families, and its decision to do so is arbitrary and capricious in violation of the APA. HUD, moreover, lacks the statutory authority to make its PRWORA-related changes, these changes are arbitrary and capricious in myriad ways, and one potential change violates the anti-commandeering doctrine.

a. HUD Must Continue Providing Prorated Assistance to Mixed-Status Families

i. HUD Lacks the Statutory Authority to Deny Prorated Assistance to Mixed-Status Families

Under 42 U.S.C. § 1436a(a), HUD may not make financial assistance available "for the benefit of any alien" unless they meet certain eligibility requirements. Under subsection (d)(2), HUD may not provide "any assistance for the benefit of that individual" before they have provided documentation verifying their eligibility and immigration status. And under subsection (b)(2), "[i]f the eligibility for financial assistance of at least one member of a family has been affirmatively established …, and the ineligibility of one or more family members has not been affirmatively established …, any financial assistance made … to that family … shall be prorated[.]"

HUD cites the above provisions to justify ending prorated assistance to mixed-status families, though it takes contradictory positions about what this text requires. In its Regulatory Impact Assessment ("RIA"), HUD asserts that its proposed changes are "required by law."[45] In the NPRM, however, it merely argues that the new regulations are in "greater alignment with the wording and purpose" of the relevant statute.[46]

Regardless of what HUD ultimately believes, long-term prorated assistance to mixed-status families is more consistent with the wording and purpose of section 1436a than the NPRM's proposed regulations. Such assistance, for example, is entirely congruent with subsection (a)'s prohibition on providing financial

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[42] *Id.* at 8156.
[43] *Id.* at 8166.
[44] *Compare* Interagency Notice at 58302, *with* NPRM at 8166.
[45] RIA at 4.
[46] NPRM at 8153.

assistance "for the benefit of any [ineligible] alien."[47] By prorating assistance to mixed-status families, HUD currently ensures that it is given only "for the benefit" of those eligible members in the applicant household. The NPRM's new understanding of the wording and purpose of this provision is substantially overinclusive by comparison, prohibiting assistance not only to ineligible noncitizens but to thousands of eligible citizens, nationals, and noncitizens, without a clear statutory basis.

How subsection (d)(2) works in conjunction with subsection (b)(2) renders HUD's understanding of section 1436a even more implausible. Subsection (d)(2) prohibits HUD from providing any assistance "for the benefit of [an] individual before [immigration status] documentation is presented and verified[.]" But subsection (b)(2) provides for prorated assistance when one household member's eligibility is affirmatively established "and the ineligibility of one or more family members has not been affirmatively established[.]" For these statutes to be consistent, HUD does not provide assistance "for the benefit of" a non-verified "individual" under subsection (a) or (d)(2) when it provides prorated assistance to the household based on the confirmed eligibility of another occupant under subsection (b)(2). It necessarily follows that HUD does not provide assistance "for the benefit of" an ineligible noncitizen who does not contend eligibility when it prorates benefits to their household based on the eligibility of another occupant.

The NPRM, moreover, reads non-existent requirements into subsection (b)(2). First, Congress did not indicate that prorated assistance is a temporary condition. To the contrary, this subsection provides for long-term prorated assistance when "the ineligibility of one or more family members has not been affirmatively established[.]"[48] Congress could easily have stated that prorated assistance is only available "during the pendency of the verification process"—but it did not. Indeed, subsection (b)(2) is devoid of any temporal conditions on the provision of prorated assistance—such as "until" or "yet"— that would indicate a limit to such assistance.

Second, and relatedly, nothing in the text suggests that Congress requires HUD to verify the eligibility of every occupant in a household. Instead, complete assistance is available when every occupant's eligibility is verified, and prorated assistance is available when "the ineligibility of one or more family members has not been affirmatively established."[49] The "do not contend" provision tracks this understanding of the aforementioned statutes perfectly, whereas the NPRM reads a restrictive verification requirement into the statute, without a basis in the text.

HUD's understanding of these provisions becomes even more irreconcilable when considering another portion of the statute, which the NPRM ignores. Subsection (d)(6) dictates that HUD must terminate an individual and their household members' benefits, for a period of not less than 24 months, "upon determining that such individual has knowingly permitted" an ineligible occupant "to reside[] in the public or assisted housing unit of the individual[.]" The provision then states that it "shall not apply to a family

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[47] 42 U.S.C. § 1436a(a).
[48] *Id.* at § 1436a(b)(2).
[49] *Id.*

if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family." But again, if HUD makes an affirmative determination that a family member is ineligible, subsection (b)(2) prevents it from providing prorated assistance to the household.

The subsection (d)(6) carve-out thus presupposes a mechanism by which HUD can "consider" the "ineligibility" of a household member as part of the proration calculation, without making an affirmative determination of ineligibility that would trigger subsection (b)(2)'s bar on providing prorated assistance. That is precisely what the "do not contend" provision accomplishes: the ineligibility of an occupant who does not contend eligibility is considered in the proration calculation, but it does not trigger the bar on prorated assistance under subsection (b)(2). HUD's proposed elimination of the "do not contend" provision, however, renders the subsection (d)(6) carve-out superfluous.[50]

The plain text of section 1436a thus dictates that HUD must continue providing long-term prorated assistance to mixed-status families. If there was any doubt, the canon of constitutional avoidance further compels this conclusion.[51] In *Moore v. City of E. Cleveland, Ohio*, the Supreme Court held unconstitutional a city ordinance limiting occupancy of a dwelling unit to members of a single family, where the ordinance contained a definitional section limiting "family" to only a few categories of related individuals.[52] In so holding, *Moore* reiterated that Due Process Clause protects not only the bonds "uniting the members of the nuclear family[,]" but the "tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children[.]"[53] Because the "institution of family is deeply rooted in this Nation's history and tradition[,]" the Court found the ordinance limiting the type of family members who could cohabitate unconstitutional.[54]

Like the ordinance at issue in *Moore*, HUD seeks to regulate the type of family members that can cohabitate. But unlike in *Moore*, where the city drew lines based on types of familial relations, HUD seeks to draw lines by discriminating on the basis of alienage, a protected class under the Fifth Amendment.[55] The grave constitutional concerns underlying HUD's proposed regulations dictate resolving any ambiguity in section 1436a to require long-term prorated assistance to mixed-status families.

HUD's current regulatory regime heeds closely to the wording and purpose of section 1436a and avoids conflict with the Constitution. The NPRM, however, reads restrictive requirements into the statute that do not exist, renders several provisions in conflict with each other, certain terms superfluous, and raises

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[50] In any event, maintaining the "do not contend" provision is most consistent with the text of subsection (d)(6).
[51] *See Clark v. Martinez*, 543 U.S. 371, 381 (2005) (explaining that the canon of constitutional avoidance "is a tool for choosing between competing plausible interpretations of a statutory text" "to avoid the decision of constitutional questions").
[52] *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 499-506 (1977).
[53] *Id.* at 504.
[54] *Id.* at 503.
[55] *See, e.g.*, *Washington v. Davis*, 426 U.S. 229, 239 (1976) (holding that the Fifth Amendment contains an equal protection component prohibiting the United States from discriminating between individuals or groups); *Rodriguez v. Procter & Gamble Co.*, 465 F. Supp. 3d 1301, 1322 (S.D. Fla. 2020) (holding that discrimination on the basis of immigration status constituted discrimination on the basis of alienage).

significant constitutional concerns. HUD thus lacks the statutory authority to end prorated assistance to mixed-status families and must rescind this portion of the NPRM.

ii. The Decision to End Prorated Assistance to Mixed-Status Families Is Arbitrary and Capricious in Violation of the APA

The APA prohibits agencies from taking action that is "arbitrary" and "capricious."[56] This standard "'requires agencies to engage in reasoned decisionmaking,'" and "to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach."[57] An agency acts arbitrarily and capriciously when it "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[58] HUD has committed such errors in deciding to end prorated assistance to mixed-status families, several of which are discussed below.

For the reasons discussed in the prior section, the NPRM failed to consider important aspects of the problem at hand. "Although an agency may justify its policy choice by explaining why that policy is more consistent with statutory language than alternative policies," it must still "analyze or explain why the statute should be interpreted" as it now purports.[59] The NPRM, however, summarily recites cherry-picked portions of statutory language from section 1436a and provides no analysis whatsoever as to why its fundamental change in policy is more consistent with the wording and purpose of the statute.[60] HUD, moreover, cannot definitively decide what the statute requires: claiming in the RIA that its changes are "required by law,"[61] but claiming in the NPRM that its changes merely bring the regulations "into greater alignment with the wording and purpose of the statute."[62] The failure to properly understand, consider, and interpret the relevant statutory text renders HUD's proposed changes arbitrary and capricious under the APA.

HUD's conclusions on the costs these changes will impose on mixed-status families also runs counter to the evidence before it. In discussing these costs, HUD claims that "[f]or those with eligible status, there *may* be some de minimis costs, to the extent individuals need to obtain the required documents to show proof of eligibility[,]" and there "*may* be an increase in homelessness for mixed-status families.[63] As the RIA acknowledges, the "typical mixed household [consists of] four members [and is] below the federal

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[56] 5 U.S.C. § 706(2)(A).
[57] *Bhd. of Locomotive Eng'rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020)).
[58] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[59] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 223-24 (2016).
[60] NPRM at 8151-53; *see also id.* (requiring analysis from an agency on this issue when such a change in policy has occurred).
[61] RIA at 4.
[62] NPRM at 8153.
[63] RIA at 5, 34 (emphasis added).

poverty line … [of] about $31,200[.]"[64] Such families receive, on average, "$11,000 per household[.]"[65] Ending $11,000 dollars of assistance to a family of four making less than $31,200 dollars a year is devastating. The NPRM will obviously impose significant costs on those with eligible status in mixed-status families. It will also cause a material reduction in standards of living and an increase in homelessness for such families who lose assistance.

HUD, moreover, fails to adequately consider how this rulemaking will harm the development of eligible citizen, national, and noncitizen children in mixed-status families. This is despite the fact that it recognizes, as of 2024, that 65% of people in mixed-status families receiving prorated assistance are children.[66] It also concludes that such mixed-status families with children are the most likely to forgo benefits under the proposed changes to ensure that their families stay together.[67]

Stable housing is critical to these children's development. Infants in families experiencing homelessness are more likely to have physical health problems.[68] Housing instability in children, moreover, has been linked to attention and behavioral problems,[69] a 42% higher chance of experiencing anxiety and a 57% higher chance of experiencing depression,[70] and academic underperformance,[71] amongst other negative outcomes.

HUD completely fails to discuss these foreseeable harms and reaches quite a stark conclusion in the NPRM: to ensure that assistance does not incidentally improve the lives of ineligible noncitizens, it must modify its regulations such that two-thirds of the individuals harmed by its changes are U.S. citizen, national, and eligible noncitizen children. Put another way, to ensure that ineligible noncitizens' lives are not incidentally improved, HUD believes it must sacrifice the stability and development of two times as many U.S. citizen, national, and eligible noncitizen children.

But this foreseeable harm to citizen, national, and eligible noncitizen children is precisely the kind of "important aspect of a problem" that an agency must consider under the APA. Yet, HUD does not address this tradeoff, let alone explain why it is beneficial. The failure to do so violates the APA.[72]

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[64] *Id.* at 9.
[65] *Id.* at 9-10.
[66] *Id.* at 8.
[67] *Id.* at 13.
[68] Sonya Acosta, *Stable Housing Is Foundational to Children's Well-Being*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 15, 2022), https://www.cbpp.org/blog/stable-housing-is-foundational-to-childrens-well-being.
[69] *Id.*
[70] Rachael Zehrung, Di Hu, Yawen Guo, Kai Zheng & Yunan Chen, *Investigating the Effects of Housing Instability on Depression, Anxiety, and Mental Health Treatment in Childhood and Adolescence*, 2024 AMIA ANN. SYMP. PROC. 1303, https://pmc.ncbi.nlm.nih.gov/articles/PMC12099419/.
[71] Eric Moore, *New Research Shows Stable Housing May Lead to Positive Educational Outcomes*, CHARLOTTE URB. INST. (Dec. 11, 2024), https://ui.charlotte.edu/2024/12/11/new-research-shows-stable-housing-may-lead-to-positive-educational-outcomes/.
[72] *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43.

b. HUD Must Rescind Its Proposed Changes to PRWORA Reporting Requirements

i. HUD Lacks the Statutory Authority to Require Owners to Comply with PRWORA, and Its Decision to Do So Is Arbitrary and Capricious

HUD summarily determined that "owners should align with PHAs" on PRWORA reporting requirements "to create more uniform program requirements."[73] PRWORA, however, only dictates that the HUD Secretary must "ensure that each contract for assistance entered into under section 1437d or 1437f of this title with a [PHA] provides that the [PHA] shall furnish such information at such times with respect to any individual who the [PHA] knows is not lawfully present in the United States."[74] By omitting owners from this statute, Congress chose not to include them in PRWORA reporting requirements.

Indeed, the Interagency Notice regarding PRWORA compliance confirms this understanding of the statute. As it explains, PRWORA "requires each entity or type of entity specified in the statute to report to [DHS] … any individual who the entity … "knows is not lawfully present in the United States[.]"[75] It then lists out those "[e]ntities required to report under this provision[,]" which, as relevant here, only include "HUD" and "any public housing agency that enters into a contract for assistance" with HUD.[76] As the Interagency Notice correctly concludes, "[n]o other entity is required to report under … PRWORA."[77] HUD thus lacks statutory authority to require owners to comply with PRWORA reporting requirements and must rescind this portion of the NPRM.

HUD's proposal to require owners to comply with PRWORA reporting requirements is also arbitrary and capricious under the APA. First, an agency must "analyze or explain why [a] statute should be interpreted" to include or exclude a new entity, particularly when the proposed change "is inconsistent with the [agency's] longstanding earlier position."[78] The NPRM, however, failed entirely to address PRWORA's clear statutory language excluding owners from reporting, as well as the governing Interagency Notice supporting that understanding of the statute—an interpretation which is in direct conflict with the NPRM's proposal. This lack of reasoned explanation and analysis renders this portion of the NPRM arbitrary and capricious in violation of the APA.

The NPRM is also arbitrary and capricious because its errors and inconsistencies make it difficult to determine if it is in fact imposing PRWORA requirements upon owners in the first place. While the NPRM states that it requires owners to comply with PRWORA, the proposed regulations do not add any PRWORA reporting obligations. Section 5.808(e)(2)(vi) only requires owners to provide a notice to

[73] *Id.*
[74] 42 U.S.C. § 1437y.
[75] Interagency Notice at 58302.
[76] *Id.*
[77] *Id.*
[78] *Encino Motorcars, LLC*, 579 U.S. at 223-24.

prospective applicants regarding their reporting obligations. The NPRM's purported proposed subsection (d)(4) includes a similar notice requirement in the verification consent form.[79] But again, no such subsection (d)(4) actually exists in the proposed regulations portion of the NPRM.[80]

Without imposing any reporting obligations on owners elsewhere, proposed subsection (e)(2)(vi) dictates that owners "may meet the [PRWORA] reporting requirement by conforming with the applicable federal register notices, including Interagency Notices, providing guidance on compliance with PRWORA section 404."[81] But as discussed above, the relevant Interagency Notice concludes that owners are not required to comply with PRWORA reporting requirements.

The NPRM thus requires owners to provide one (maybe two) notices about their assumed PRWORA reporting obligations, and the proposed regulations dictate that owners comply with these reporting requirements by following the Interagency Notice concluding that they need not comply with these requirements. This proposal is unclear, internally inconsistent, and riddled with errors. It is thus arbitrary and capricious in violation of the APA and must be rescinded.

ii. HUD Must Rescind the PRWORA Notice Requirements

The NPRM claims that it is adding the section 5.508(e)(2)(vi) and missing subsection (d)(4) notice requirements to "affirm [the] longstanding reporting requirement under PRWORA[.]"[82] But the reporting obligations within these notices are inconsistent with PRWORA's requirements. PRWORA only requires reporting when a PHA "knows" an individual is unlawfully present, and the Interagency Notice interpreting that word correctly sets a high bar. PRWORA also only requires reporting "at least four times annually and upon request of" DHS.[83] The notice requirement, however, indicates that PHAs are obliged to "immediately" report whenever personnel "determine" unlawful presence.[84]

Because the NPRM purports to require owners to comply with PRWORA via these notice requirements alone, it is unclear whether HUD intends to treat these notice obligations as imposing additional reporting requirements upon PHAs and owners inconsistent with the controlling Interagency Notice. This unexplained inconsistency itself renders this portion of the NPRM arbitrary and capricious in violation of the APA. But, however HUD intends to treat these notice obligations, as discussed below, it must still rescind this portion of the NPRM.

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[79] NPRM at 8156.
[80] *Id.* at 8166.
[81] *Id.*
[82] *See id.* at 8156.
[83] 42 U.S.C. 1437y.
[84] NPRM at 8166.

1. If the Notice Requirements Reflect a Change in Reporting Obligations for PHAs, HUD Lacks Statutory Authority to Make Such Changes, They Constitute Unconstitutional Commandeering, and Are Arbitrary and Capricious in Violation of the APA

If the notice requirements dictating that PHAs "immediately" report when personnel "determine" an individual is unlawfully present reflect substantive changes to the timing and knowledge standards for PRWORA reporting, HUD lacks statutory authority to make such changes.

With respect to the timing of PRWORA reporting, the statute only requires PHAs to report "at least 4 times annually and upon request of" DHS.[85] HUD cites no request from DHS requesting immediate PRWORA reporting and it lacks authority to make any determinations on DHS' behalf.[86] HUD thus lacks statutory authority to require PHAs to make immediate reports to DHS.

HUD also lacks authority to materially reduce the PRWORA reporting threshold. The statute requires PHAs to "know" of unlawful presence to require reporting.[87] The Interagency Notice correctly sets a high bar, requiring: (1) a finding of fact or conclusion of law that is made by the [PHA] as part of a formal determination regarding assistance that is subject to administrative review, where a "[]SAVE[] response showing no Service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present[;]" and (2) the finding "must be supported by a determination by [USCIS] or the Executive Office of Immigration Review, such as a Final Order of Deportation."[88]

Under the proposed regulations, it is virtually impossible for a PHA to ever "know" of unlawful presence, as the NPRM removes the USCIS administrative review process, and most determinations regarding eligibility for assistance are made exclusively via SAVE,[89] which does not make accurate citizenship determinations.[90] If HUD believes PHA personnel "determine" unlawful presence, when, for example, the applicant fails secondary verification in SAVE, it lacks statutory authority to require PHAs to report under PRWORA on the basis of such limited information.

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[85] 42 U.S.C. § 1437y.
[86] *See, e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 1291, 1297 (2000) (asserting that agencies "may not exercise their authority in a manner that is inconsistent with the administrative structure that Congress enacted into law") (internal quotations and citations omitted).
[87] 42 U.S.C. § 1437y.
[88] Interagency Notice at 58302.
[89] *See* NPRM at 8155, 58-59.
[90] *See, e.g.*, *Review of Allegations of Noncitizen Registrants and Voters*, CTR. FOR ELECTION INNOVATION & RSCH. (July 2025), https://electioninnovation.org/research/noncitizen-analysis-update/ (last accessed April 7, 2026) (highlight how SAVE substantially overestimated possible noncitizens registered to vote in Texas); Amy Sherman, *Fact Check: Do States Verify U.S. Citizenship as a Condition For Voting?*, AUSTIN AMERICAN STATESMAN (December 7, 2020) (highlighting states abandoning the SAVE system due to accuracy issues).

Because PRWORA does not authorize HUD to make these potential changes, they cannot be justified by the Spending Clause. Under the Spending Clause "*Congress* may fix the terms on which it shall disburse federal money to the States."[91] And if Congress intends to "impose a condition on the grant of federal moneys, it must do so unambiguously."[92] Because these changes to the timing and knowledge requirements for reporting are not supported by statute, the Spending Clause cannot support their imposition.

As a result, any reporting obligations for PHAs in excess of PRWORA's obligations constitute unconstitutional commandeering. The anti-commandeering doctrine, rooted in the Tenth Amendment, dictates that the "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs" or "to enforce federal law."[93] This principle extends to local government entities as well.[94] Courts have repeatedly found that purported information-sharing requirements preventing states and municipalities from extracting themselves out of "involvement in a federal [immigration] program" violate the anti-commandeering doctrine.[95] A mandate for PHA officials to immediately report individuals' immigration status to DHS is such a policy, and any requirements not authorized by PRWORA violate the anti-commandeering doctrine.

Lastly, if the NPRM intends to treat these notice requirements as imposing substantive reporting obligations, its failure to clearly explain how these notice requirements impose such obligations, to address their inconsistency with the Interagency Notice, and to consider and address these important statutory and constitutional concerns renders the proposal arbitrary and capricious under the APA.

2. If the Notice Requirements Do Not Reflect a Change in Reporting Obligations for PHAs, the Changes Are Nevertheless Arbitrary and Capricious in Violation of the APA

As previously discussed, the NPRM makes substantial changes to the eligibility verification process, including the removal of the administrative appeal process and near exclusive reliance on SAVE for verification.[96] Under the Interagency Notice's reporting threshold, these changes dictate that PHAs will rarely, if ever, "know" of an individual's unlawful presence for purposes of PRWORA reporting.[97] The NPRM nevertheless imposes daunting and intimidating notice requirements for applicants: warning them that PHAs will immediately report them if personnel determine they are unlawfully present.[98]

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[91] *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (emphasis added and citations omitted).
[92] *Id.* (citations omitted).
[93] *Printz v. United States*, 521 U.S. 898, 925 (1997) (citations omitted).
[94] *E.g.*, *Galarza v. Szalczyk*, 745 F.3d 634, 636 (3d Cir. 2014).
[95] *E.g.*, *Colorado v. Dep't of Justice*, 455 F. Supp. 3d 1034, 1059-60 (D. Colo. 2020) (internal quotation and citation omitted); *City of Chicago v. Sessions*, 264 F. Supp. 3d 933, 946-49 (N.D. Ill. 2017).
[96] *Supra* at 4.
[97] *See* NPRM at 8155, 58-60.
[98] *Id.* at 8166.

The NPRM thus seeks to impose a notice requirement that will have a chilling effect on eligible applicants seeking benefits, precisely when the review process renders PRWORA reporting functionally impossible. Given this administration's persistent disregard of citizenship status in the enforcement of immigration law, the chilling effect of these severely worded notice requirements will be stark.[99] If HUD wants to add such a notice precisely when it renders PRWORA reporting functionally obsolete, it must explain why it is making that policy decision.[100] Its failure to do so violates the APA.

III. Conclusion

HUD has concluded that, to ensure ineligible noncitizens' lives are not incidentally improved by HUD assistance, it must stop providing assistance to two times as many U.S. citizen, national, and eligible noncitizen children—damaging their stability and development for years to come. This unsound and misguided policy, if implemented, will disproportionally harm the Latino community and its children. It is also, for the reasons discussed above, unlawful. MALDEF thus respectfully requests that HUD rescind the NPRM and maintain HUD's current regulatory regime.

Please feel free to contact us with any questions or concerns about these comments at (202) 559-1823 or jcalo@maldef.org.

Thank you.

Sincerely,

Jesse Calo
Legislative Staff Attorney

[99] *See, e.g.*, Nicole Foy, *We Found That More Than 1070 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged, and Detained for Days*, PROPUBLICA (Oct. 16, 2025), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will?utm_source=sailthru&utm_medium=email&utm_campaign=majorinvestigations&utm_content=feature.