



National Association of Housing and Redevelopment Officials

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December 10, 2018

Samantha Deshommes, Chief,
Regulatory Coordination Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds¹

Dear Chief Deshommes:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Homeland Security (DHS or the Department) in response to the notice of proposed rulemaking titled "Inadmissibility on Public Charge Grounds" published in the *Federal Register* on Wednesday, October 10, 2018.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over \$1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. The National Association of Housing and Redevelopment Officials has the unique ability to represent public housing agencies, local redevelopment agencies, and other U.S. Department of Housing and Urban Development (HUD) grantees of all sizes and geography.

The National Association of Housing and Redevelopment Officials opposes the proposed rule due to its negative impact on immigrant families and the additional negative consequence of inefficient use of limited social service funds. NAHRO requests that the proposed rule be withdrawn as written and the current public charge guidance remain in effect.

Currently "public charge" is defined by a notice from May 26, 1999 titled "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds." This 1999 field guidance defined "public charge" as a person that is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income

¹ All citations are informal.

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maintenance or (ii) institutionalization for long-term care at government expense.”² This field guidance further states that, “officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.”³

The proposed rule makes significant changes and additions to the current public charge guidance. The proposed new definition of “public charge” is “that a person should be considered a public charge based on the receipt of financial support from the general public through government funding (i.e., public benefits).”⁴ In order to use this definition of “public charge,” “public benefit” must be defined and the proposed rule provides a definition that vastly and inappropriately expands the programs that are to be considered. The proposed rule defines public benefit “to include a specific list of cash aid and noncash medical care, housing, and food benefit programs,”⁵ based on a percentage of the Federal Poverty Guidelines and/or the amount of time the public benefit is received. The list of benefits includes the current cash assistance and institutionalization benefit and further expands the benefits to include the Supplemental Nutrition Assistance Program (Food Stamps), the Housing Choice Voucher Program (HCV), Section 8 Project-Based Rental Assistance (PBRA), Medicaid, and Public Housing.

As NAHRO and its members primarily administer the U.S. Department of Housing and Urban Development (HUD) housing programs, these comments focus on why HUD housing programs should be excluded from the definitions of public charge and public benefit.

Noncitizens use miniscule housing benefits

DHS acknowledges in the proposed regulation that noncitizen participation in the Public Housing, Housing Choice Voucher, and Section 8 Project-Based Rental Assistance programs is “relatively low.” DHS cites the 2008 Panel of the Survey of Income and Program Participation (SIPP), that “suggests that 0.2% of noncitizens lived in Section 8 housing, while 0.4% lived in housing subsidized through some other government program.”⁶ By statute⁷ and regulation⁸ HUD restricts housing benefits to United States citizens and eligible noncitizens. The housing benefit is prorated so that the non-eligible noncitizen does not receive a subsidized housing benefit. In almost all cases where an eligible noncitizen is receiving HUD housing assistance the proposed public charge rule would not apply. There are two exceptions –

1. Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a], and
2. Immigrants lawfully admitted pursuant to section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA) (48 U.S.C. 1931 note).

² Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99], May 26, 1999.

³ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99], May 26, 1999.

⁴ Inadmissibility on Public Charge Grounds, 83 FR 51114, October 10, 2018, Page 51158.

⁵ Inadmissibility on Public Charge Grounds, 83 FR 51114, October 10, 2018, Page 51158.

⁶ Inadmissibility on Public Charge Grounds, 83 FR 51114, October 10, 2018, Footnote 318.

⁷ 42 U.S.C. 1436a.

⁸ 24 CFR 5 Subpart E.

In these two circumstances, the individual is eligible for HUD housing assistance and the proposed public charge rule would apply when the individual would apply for an immigration status change. Both of these exceptions account for very few people as Section 245A of the Immigration and Nationality Act requires the individual to have come to the U.S. in the early or mid-1980s and be on a temporary status, and only 42 individuals were lawfully admitted from the Marshall Islands, the Federated States of Micronesia, and Palau in 2017.⁹ The 2018 Panel SIPP percentages of noncitizens living in subsidized housing will be significantly lower when eligible noncitizens not subject to the proposed public charge rule are removed. Congress, via statute, and HUD, via regulation, have already protected federal dollars from being used on non-eligible noncitizens and there is no fiscally responsible reason for DHS to further step into this arena. For this reason, NAHRO opposes the inclusion of housing benefits in the proposed public charge rule.

Unnecessary confusion and misdirected resources

The proposed rule, despite having few benefits for its expected cost, has caused considerable confusion and angst among current and potential residents of HUD's housing programs. Current residents have left housing programs because of a fear of being separated from their family because of the proposed rule. While this fear may be factually unfounded, the confusion and stress are real and unnecessary. The inclusion of housing benefits (benefits that affect a very small number of noncitizens) in the new expanded definitions of public charge and public benefit are the direct cause of this stress and angst.

Public Housing Agencies (PHAs) around the country are attempting to combat the confusion of this public charge proposed rule. Many PHAs are reaching out to their current residents and local communities to explain the proposed rule and how it applies to the HUD housing programs. This is what PHAs do and they do it well, but it does divert resources from direct housing and resident services. PHAs are currently receiving only 80%¹⁰ of their HUD formula calculated HCV Administrative Fee and Public Housing Operating funds are prorated to less than 95%.¹¹ The resources needed to explain the public charge proposed rule and any future final rule would be much better spent on providing housing and resident services to U.S. citizens and eligible noncitizens.

NAHRO requests that the proposed rule be withdrawn as written and the current public charge guidance remain in effect. Please do not hesitate to contact me at gbanna@nahro.org if NAHRO can provide additional information or clarification.

Thank you,



Georgi Banna, Esq.
Director of Policy and Program Development

⁹ <https://www.dhs.gov/immigration-statistics/yearbook/2017>, Lawful Permanent Residents 2017 Supplementary Tables (Marshall Islands – 23 people, Federated States of Micronesia – 6 people, and Palau – 13 people.).

¹⁰ <https://nahroblog.org/2018/08/31/hud-increases-hcv-administrative-fee-proration-to-80/>.

¹¹ https://www.hud.gov/sites/dfiles/PIH/documents/POS1_Explanation112718FNL1.pdf.