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*Submitted via www.regulations.gov*

Regulatory Coordination Division
Office of Policy and Strategy
Citizenship and Immigrant Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, Maryland 20746

**Re: DHS Docket No. USCIS-2025-0304, Public Charge Ground of Inadmissibility**

I am writing on behalf of the National Housing Law Project in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on November 19, 2025.

The National Housing Law Project's (NHLP) mission is to advance housing justice for people living in poverty and their communities, including immigrants and their families. NHLP achieves this by strengthening and enforcing the rights of tenants and low-income homeowners, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes. NHLP also provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. Housing security is an essential component of racial and civil equality and a critical foundation for education, health, employment, social engagement, and opportunity. We provide communities and their advocates with the tools they need to advance those rights.

NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families across the country. Our work is grounded in the realities that shape poor people's housing choices. Towards that end, we bring the grassroots perspective of our national network into the policy conversation.

NHLP has significant experience and expertise at the intersection of housing and immigration, particularly for low-income tenants and their families. Our work has included advocacy related to past rulemaking concerning public charge during both the first Trump administration and the Biden administration.

**NHLP strongly urges DHS to withdraw the proposed rule,** which would remove the current well-grounded regulations on public charge without replacing them. Most notably, this would leave a void where clear guidelines currently exist about what programs can and cannot be considered in a public charge assessment and about the exclusion of benefits use by family members not seeking adjustment. This will create fear and uncertainty that will cause a "chilling effect" -- the avoidance of applying for or receiving public benefits due to fear of jeopardizing their or their family member's access to legal immigration status – even beyond what has been

previously seen. As the NPRM itself indicates, the proposed rule will make the nation and its communities–including U.S. citizen children, sicker and poorer.

The proposed rule specifically recognizes harms that could "include:

- Worse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment.

- Higher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated.

- Increased rates of uncompensated care, where treatments or services are not paid for by insurers or patients.

- Increased poverty, housing instability, reduced productivity, and lower educational attainment."[1]

The proposed public charge rule would have widespread negative consequences on immigrant families who rely or would rely on housing assistance as a critical lifeline. The proposed rule would jeopardize their housing stability and place them at risk of homelessness, which could negatively impact their employment, education, health, and ability to otherwise be self-sufficient.

**For the reasons detailed in the comments that follow, the Department should immediately withdraw its current proposal and instead dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families.** This would leave the current regulations (as codified in the 2022 rule) in effect. If the Department decides to develop an alternative rule, such rule must be open to full public notice and comment. Any guidance or tools that are created to direct officers' decisions should also be made available for notice and comment because of their significant impact.[2]

The Department should immediately clarify that any changes in the policy, whether through regulation or guidance, will be only forward-looking, and that immigration officers will be directed not to consider any benefits received during a time when the stated policy of the United States was that use of such benefits would not have adverse immigration consequences. Such a clear statement was included in both the 2018 notice of proposed rulemaking[3] and the 2019 final rule[4], and its omission from this proposal is deeply alarming.

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[1] Department of Homeland Security, *Public Charge Ground of Inadmissibility*, November 19, 2025, 90 Federal Register 52168 (2025 NPRM). https://www.federalregister.gov/d/2025-20278/p-523.
[2] Administrative Conference of the United States. *Interpretive Rules of General Applicability and Statements of General Policy*. Recommendation 76-5. n.d. Accessed November 25, 2025. https://www.acus.gov/sites/default/files/documents/76-5.pdf.
[3] Department of Homeland Security. *Inadmissibility on Public Charge Grounds*. October 10, 2018, 83 Federal Register 51114 (2018 NPRM). https://www.federalregister.gov/d/2018-21106/p-1274.
[4] Department of Homeland Security. *Inadmissibility on Public Charge Grounds*. August 14, 2019, 84 Federal Register 41292 (2019 Final Rule). https://www.federalregister.gov/d/2019-17142/p-627.

What the Proposed Rule Would Do

The proposed rule would rescind the 2022 final rule on public charge as a ground of inadmissibility[5] (with the exception of limited language regarding public charge bonds) and does not offer any replacement language – leaving a regulatory void. Instead, DHS states that at some future date, after this rule is finalized, they will create new tools and guidance to direct United States Citizenship and Immigration Services (USCIS) officers in making public charge assessments.

While not providing any details on the new tools and guidance they plan to create, the proposed rule clearly signals that the Administration wishes to reinterpret the law, rejecting the long-standing precedent that an individual can be found likely to become a public charge only if they are likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." This longstanding meaning of public charge, based on decades of case law and ratified by Congress was written into the 1999 field guidance,[6] as well as the 2022 final rule. In contrast, the Administration's NPRM reflects a much more exclusionary concept of public charge that would allow for denials for virtually any reason, including the use of supplementary benefits received by many workers, as well as a broader range of health conditions.

The NPRM would remove the clarity the current regulations provide concerning which public benefits can be considered in the public charge assessment. It suggests that the Administration proposes to consider any receipt of any type of means-tested benefits received or applied for by noncitizens at any time and for any duration, even on behalf of U.S. citizen or lawful permanent resident family members, as relevant to the public charge determination. The NPRM even states that the punitive rule adopted by the Trump Administration in 2019[7] was not extreme enough because it would "straitjacket" officers making the public charge assessment by placing any limits on the receipt of which benefits could be considered.

With respect to housing benefits, the NPRM takes an overly expansive approach. The 2022 Final Rule (*i.e.*, the current rule) does not include any housing benefits, and the 2019 Final Rule named specific HUD housing programs that would negatively factor into a public charge assessment. In contrast, the current NPRM seeks to cast a much wider net to capture a multitude of housing assistance programs beyond those administered by HUD or the federal government as well as beyond traditional rental assistance.

Because the proposed rule does not define means-tested public benefits and uses a variety of other terms to describe the programs that will be considered ("public benefit programs," "public resources," and "any type of public resources"), it maximizes confusion and fear. By purporting to remove the existing guardrails and refusing to provide any guidance on which benefits will or

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[5] Department of Homeland Security. *Public Charge Ground of Inadmissibility*. September 9, 2022, 87 Federal Register 55472 (2022 Final Rule). https://www.federalregister.gov/documents/2022/09/09/2022-18867/public-charge-ground-of-inadmissibility.

[6] Department of Justice, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, May 26, 1999, 64 Federal Register 28689 (Field Guidance). https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds.

[7] 2019 Final Rule.

will not be considered, the Administration is creating fear and uncertainty among immigrants that will predictably discourage them from seeking benefits for which they are eligible. State and local governments, services providers, and community organizations will have no reliable basis for advising those who seek assistance.

The Notice of Proposed Rulemaking (NPRM) also seems to envision that the agency may expand scrutiny of individuals to include their family members. The rule removes the section that explicitly states that applying for or receiving benefits on behalf of family members is not considered "receipt." This will have a significant chilling effect, reducing access to needed benefits for U.S. citizen and lawful permanent resident (LPR) children and pregnant people.

This chilling effect of the proposed rule is both predictable and consequential. The result will be increased poverty, children going hungry or unsheltered, and delayed or foregone medical care, with lasting negative effects on their health and well-being. The rule would also harm the country's health care systems, schools, communities, and the broader economy.

The proposed rule acknowledges these harms, while also understating their scope. The proposed rule would harm immigrants and their families applying for and receiving critical housing and homelessness assistance. As drafted, the rule departs from longstanding immigration policy where use of these critical, life-sustaining programs is not counted against immigrants and their families. By curtailing families' access to essential housing benefits, the public charge rule also threatens to worsen the acute affordable housing crisis impacting millions of renters in the United States.[8] Nationwide there is a shortage of 7.1 million affordable rental units, and 75% of extremely low-income renters are severely rent burdened, meaning they spend more than half of their income on rent and utilities.[9] This affordable housing crisis is only expected to grow in coming years.[10]

Low-income immigrants – the population that the public charge NPRM targets – face additional substantial barriers to housing. Immigrants encounter a variety of impediments to secure housing, such as language and education barriers, prejudice and discrimination, and cultural differences that may deter them from seeking and receiving services.[11] By chilling access to assistance from already at-risk groups, the proposed public charge rule threatens to plunge

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[8] Glenn Thrush, *As Affordable Housing Crisis Grows, HUD Sits on the Sidelines*, N.Y. TIMES (July 27, 2018), https://www.nytimes.com/2018/07/27/us/politics/hud-affordable-housing-crisis.html.

[9] NAT'L LOW INCOME HOUSING COALITION, THE GAP: A SHORTAGE OF AFFORDABLE HOMES 2 (MAR. 2025), https://nlihc.org/sites/default/files/gap/2025/gap-report_2025_english.pdf.h.

[10] JOINT CENTER FOR HOUS. STUDIES OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING (2025), http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2025.pdf.

[11] Jaime Ballard et al., *A Place to Call Home: Housing Challenges Among Immigrant Families*, National Council on Family Relations Report (June 24, 2020), https://www.ncfr.org/ncfr-report/summer-2020/place-call-home-housing-challenges-among-immigrant-families; *see also* ROBERT WOOD JOHNSON FOUND., LIVING IN AMERICA (Katherine E. Garrett ed., 2006), https://www.rwjf.org/en/library/research/2006/08/living-in-america.html.

those already struggling even deeper into poverty, making their route to a better life nearly impossible.[12]

The proposed rule makes no case for the need to replace the current lawful and effective regulations and fails to explain any benefits that would outweigh the widespread and devastating harms repealing them will cause. The proposed rule is impractical, dangerous, and will result in thousands of hardworking families forgoing critical, life-saving benefits, including the housing assistance programs covered under the proposed rule. Blaming struggling immigrant families will do nothing to address the nationwide affordable housing crisis; this proposed rule would instead exacerbate the effects of the crisis. The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

The following comments address two main points:

I. By removing current effective and lawful regulatory guardrails, the proposed rule creates uncertainty and fear.

II. The chilling effect of the proposed rule would cause significant and permanent harm.

**I. By removing current effective and lawful regulatory guardrails, the proposed rule creates uncertainty and fear.**

The proposed rule would rescind the 2022 Final Rule on public charge as a basis of admissibility. The Department does not provide any reasonable or legitimate justification for rescinding these regulations, which are both lawful and effective. The proposed rule does not offer any regulatory language to replace the current rules. Instead, DHS states that at some future date, after this rule is finalized, they will create new tools and guidance to direct USCIS officers in making public charge assessments. They provide no indication that they intend to offer public notice or the opportunity to comment on those tools and guidance when they are created.

**A. Removing the regulatory guardrails creates rational uncertainty and fear.**

**1. The proposed rule provides no guidance regarding benefits that will be considered**

By refusing to provide any guidance on what benefits will– and will not– be considered in a public charge assessment, the Administration is choosing to create fear, confusion, and uncertainty among immigrants that will predictably discourage them and their families from accessing benefits for which they are eligible.

Throughout the NPRM the Department uses multiple terms, none of which are defined, to describe the programs that USCIS officials will be allowed to consider in a public charge

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[12] Gillian B. White, *Escaping Poverty Requires Almost 20 Years With Nearly Nothing Going Wrong*, ATLANTIC (Apr. 27, 2017), https://www.theatlantic.com/business/archive/2017/04/economic-inequality/524610/.

assessment. This inconsistency exacerbates the confusion and fear generated by the proposed rule. Each term the department uses has a different potential meaning. The regulatory language regarding bonds, the proposed revisions to Form I-485, and the paragraph with the clearest statement of what would happen if the proposed removal of 8 CFR 212.22 is finalized all use the term "means-tested public benefit."[13] Other terms used at various points in the proposed rule include "public benefits" (used 165 times), "public benefit programs" (used 12 times), and "public resources" (used 13 times). In one place, it simply says "DHS proposes to eliminate these definitions that limit the *benefits* that are considered as part of the public charge inadmissibility determination"[14] (emphasis added). In another place it says "the receipt of *any type of public benefits* by a qualified alien is relevant and indeed critical to determining whether an alien is actually self-sufficient"[15] (emphasis added). Uncertainty about the Department's intentions is the only logical response.

There are a vast number of programs and services that an immigration official might decide fall under the heading of a "public benefit" or "public resource" including many not limited to low-income people. It is beyond imagination that DHS intends that *all* of these benefits should count in the public charge determination. But the proposed rule does not provide any guidance on which programs would *not* be considered; indeed, it explicitly rejects the concept of doing so. By contrast, the 2019 final rule included statements such as "this definition does not include benefits related exclusively to emergency response, immunization, education, or social services"[16] and "DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance."[17]

**a. Without a definition of "public benefit," the NPRM captures a multitude of housing assistance programs that go far beyond prior policy and practice.**

Similarly, the NPRM refers to housing benefits inconsistently: "federally funded housing programs," "housing benefits," "housing assistance", and "federal rental assistance." Without a regulatory definition of public benefits covered by the proposed public charge rule, it is nearly impossible to know with certainty which housing assistance programs are covered.[18] The closest that the proposed rule comes to specificity with respect to housing programs is Footnote 10 in Table VI.8, which states that "'Federal Rental Assistance' includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521."[19] But this sentence simply describes how the term "federal rental assistance" is defined in the table, not in the proposed rule generally. Nothing in the NPRM limits the inclusion of housing benefits to rental assistance generally or to these programs specifically. Confounding matters further, this footnote is the only instance where the

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[13] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-365.
[14] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-327.
[15] 2025 NRPM https://www.federalregister.gov/d/2025-20278/p-280.
[16] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-522.
[17] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-527.
[18] By contrast, the 2019 Final Rule enumerated the covered housing assistance programs: public housing, Section 8 housing assistance under the Housing Choice Voucher program, and Section 8 Project-Based Assistance. 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/page-41295
[19] 2025 Proposed Rule: https://www.federalregister.gov/d/2025-20278/page-52211

NPRM mentions USDA Section 521. References to "federal rental assistance" in the NPRM's other tables only refer to the HUD programs, and the NPRM fails to explain or even acknowledges this inconsistency.

Housing assistance takes a multitude of forms, making it exceedingly difficult to define the scope of housing benefits covered by the public charge rule. Although the 2019 Final Rule confined its application to select HUD housing assistance programs, this does not provide a reliable guidepost for assessing which benefits fall under the current NPRM for a few reasons.

First, rental assistance is not limited to HUD. Multiple federal agencies administer rental assistance programs, such as USDA's Rural Rental Assistance Program (Section 521) and Treasury's Emergency Rental Assistance Program. In addition, a number of state and local governments have created their own rental assistance programs in response to the needs of their communities, including immigrant community members. Without a definition of public benefits, it is plausible that DHS officers could consider use of these programs as part of the public charge assessment, even though they have historically been excluded under the 1999 Field Guidance, the 2019 Final Rule, and the 2022 Final Rule.

Second, HUD provides more than rental assistance. HUD awards block grants through its Office of Community and Planning Development, which grantees and subgrantees use to support housing as well as other community development activities. This includes the Community Development Block Grants (CDBG) program, which fund a wide range of activities beyond rental assistance. The categories of eligible activities for CDBG funding include acquisition of real property, disposition, public facilities and improvements, clearance, public services, interim assistance, relocation, loss of rental income, privately-owned utilities, rehabilitation, construction of housing, code enforcement, special economic development activities, microenterprise activities, special activities by community-based development organizations, homeownership assistance, planning and capacity building, program administration costs, and miscellaneous other activities.[20] Because some of these activities benefit communities broadly, participation in these activities would not provide evidence of a lack of self-sufficiency. Nor are these programs equipped to verify immigration status, much less document past participation for use in future public charge determination. This lack of infrastructure is due to the fact that the CDBG program lacks any statutory eligibility restrictions or verification requirements for immigrants. Without rulemaking to guide their discretion, DHS officers could include participation in these grant-funded activities in their public charge assessment, even though they are not relevant to the question of self-sufficiency.

Finally, some affordable housing programs exist to confer benefits to private developers and owners and therefore should not be treated as a benefit to tenants under public charge. The Low-Income Housing Tax Credit (LIHTC), for example, provides tax incentives to encourage developers to create affordable housing.[21] It does not involve any direct government expenditure to residents. Living in a unit financed by LIHTC has not historically been included in

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[20] 42 U.S.C. § 5305 (2025) (enumerating activities eligible for assistance); 24 C.F.R. § 570.200 (2025).

[21] These tax credits are provided to each State based on population and are distributed to the State's designated tax credit allocating agency. In turn, these agencies distribute the tax credits based on the State's affordable housing needs with broad outlines of program requirements from the federal government. On their own, tax credit subsidies provide a moderate level of affordability through rent restrictions.

the public charge determination, and yet it is plausible that the current NPRM allows such inclusion, even though the program is structured to benefit private developers rather than tenants.

Without clear guidance, states, local governments, and organizations that help families enroll in benefits (including public housing authorities, state housing finance agencies, and housing counselors) would be unable to provide definitive reassurance to immigrants and their family members which housing programs were safe to use. One could look for clues to determine which housing benefits could factor into a public charge determination, but at the end of the day, rulemaking is not supposed to be guesswork. Refusing to articulate *which benefits* will count has both enormous chilling effects and leaves an excessive amount to the discretion of individual immigration officers, who are not experts in public benefits and cannot reasonably be expected to understand the details of hundreds (or thousands) of programs.

**b. The NPRM would allow DHS officers to consider housing benefits programs that people rely upon in emergency situations and that have no bearing on a person's self-sufficiency.**

Without guardrails, immigration officials would be free to come up with their own definitions of "means-tested benefits" leaving open questions about whether any number of programs might be counted, including the following housing programs that have or had life-or-death consequences for anyone accessing these programs, regardless of their immigration status:

- **Covid-19 Emergency Rental Assistance Program** (ERAP) – It would be absurd to include use of Emergency Rental Assistance during the Covid-19 pandemic in a public charge determination. ERAP served several purposes. First, it provided direct rental payments to private market landlords to ensure that the economic hardship precipitated by the pandemic did not affect their housing portfolio.[22] Second, it helped renters address one-time rental shortfalls due to Covid-19 related hardship, such as when their income and wages fell for reasons outside of their control, such as reduced hours due to the closure of their place of employment or increased childcare needs due to the closure of schools. The pandemic saw record numbers of tenants fall behind on rent,[23] which means that falling behind on rent and using ERAP to catch up in the short term during the pandemic does not indicate a long-term lack of self-sufficiency.[24] Third, it prevented the Covid-19 transmission and death. During the pandemic, the need to keep people housed was directly tied to the need to prevent the spread of Covid-19 and to prevent

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[22] U.S. Department of the Treasury, Emergency Rental Assistance, Frequently Asked Questions (rev. Mar. 5, 2024), https://home.treasury.gov/system/files/136/ERA-FAQs03052024.pdf.

[23] Zofsha Merchant & Erin Troland, *Did the Pandemic Change Who Became Behind on Rent? Characteristics of Renters Behind on Rent Before and After the Pandemic Onset*, FED Notes (Apr. 18, 2023), https://www.federalreserve.gov/econres/notes/feds-notes/did-the-pandemic-change-who-became-behind-on-rent-20230418.html ("[B]y 2021, the percent of renters behind on rent in the past year increased to 17 percent from 10 percent in 2019 before the pandemic.").

[24] There were two rounds of emergency rental assistance. The first round was limited to 15 months of assistance, and the second round was limited to 18 months of assistance. Grant A. Driessen et al., Congressional Research Services, *Pandemic Relief: The Emergency Rental Assistance Program* (Jan. 10, 2023), https://www.congress.gov/crs-product/R46688.

death.[25] Research has attributed eviction prevention measures, such as ERAP, to the prevention of deaths associated with Covid-19.[26] Housing instability, as measured by eviction filings, was associated with significantly increased risk of death over the first 20 months of the COVID-19 pandemic.[27] Eviction prevention efforts may have reduced excess mortality for renters during this period.[28] Given the true life-or-death consequences of ERAP for individuals, families, and communities, it would be counterproductive to include ERAP in the public charge determination because it is essentially asking immigrant families to put the future possibility of adjusting their immigration status over the immediate risk to their health and the health of their communities. Inclusion of ERAP and future ERAP-type programs in the public charge determination would also harm property owners, whose tenants would be forced to forgo thousands of dollars available funds that could be used to pay their rent to avoid future immigration consequences.

- **Disaster housing assistance** – For similar reasons, it would be absurd to include use of housing assistance for disaster survivors in a public charge determination. For example, FEMA Continued Temporary Housing Assistance for renters and homeowners displaced by disaster damage could be considered a means-tested benefit because recipients must demonstrate that they lack the financial ability to obtain housing without assistance (i.e., individual would be forced to pay more than 30 percent of gross post-disaster household income for housing).[29] Families with immigration statuses that qualify them for FEMA assistance should not have to live in a car or other place unfit for habitation out of fear that accepting assistance that they qualify for could negatively impact a future status adjustment. Another example is the Rapid Unsheltered Survivor Housing (RUSH) program, a first-of-its-kind program to address the needs of the lowest-income survivors – including people of color, seniors, people with disabilities, people experiencing homelessness, and people with limited English proficiency – who are often hardest hit by disasters and left with the longest, steepest paths to recovery.[30] The RUSH program and other similar disaster recovery programs have been deployed to help survivors after catastrophic disasters, such as the wildfires in Maui in 2023 and Los Angeles in 2025, Hurricane Helene in North Carolina in 2024, and the floods in Central Texas in the summer of 2025. These programs help people and communities survive and rebuild after everything has been destroyed. Obtaining disaster relief reflects that the catastrophic loss by an entire community and is not evidence that a person requires

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[25] Emily A. Benfer et al., Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy, 98 J. URB. HEALTH 1 (2021). https://pmc.ncbi.nlm.nih.gov/articles/PMC7790520/

[26] Leifheit KM, Linton SL, Raifman J, Schwartz GL, Benfer EA, Zimmerman FJ, Pollack CE. Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality. Am J Epidemiol. 2021 Dec 1;190(12):2503-2510. doi: 10.1093/aje/kwab196. PMID: 34309643; PMCID: PMC8634574.

[27] *Id.*

[28] *Id.*

[29] FEMA, Individual Assistance Program and Policy Guide (IAPPG), FP 104-009-03, p. 82 (May, 2021); 24 C.F.R. 206.111

[30] Noah Patton & Natalie N. Maxwell, Plugging the Gaps: Recommendations for HUD's RUSH Program (Oct. 2023), https://nlihc.org/sites/default/files/2023-10/plugging-gap-report.pdf.

sustained public support. Allowing the receipt of such assistance to factor into a public charge determination harms both immigrants and the communities they live in.

- **Emergency Housing Vouchers for Domestic Violence Survivors** – Individuals fleeing gender-based violence have sometimes had access to Emergency Housing Vouchers.[31] In addition, covered housing provider must provide emergency transfer vouchers to survivors under the Violence Against Women Act.[32] If such assistance is considered in public charge determinations, survivors would have to choose between housing free from abuse for them and their children or preserving their eligibility for a future status adjustment. Survivors with qualifying immigration statuses under Section 214, or who live in mixed status families, should not be punished for choosing safe housing over homelessness or continued exposure to violence.

**c. The NPRM would allow DHS officers to consider housing assistance programs tied to a person's employment and that have no bearing on a person's self-sufficiency.**

Furthermore, the NPRM does not explicitly limit the public charge determination to "means-tested benefits," which means that DHS officers would have the discretion to weigh the following types of housing assistance as a negative factor, even though they are tied to employment.

- **Housing Assistance for Active Military** – Whereas the 2019 Final Rule excluded benefits received by active military servicemembers and their families from the public charge determination,[33] the current NPRM contains no such exception. Because the current NPRM also fails to define "public benefit," a DHS officer could plausibly include in their public charge determination the various forms of military housing assistance that active service members and their families receive. For example, active servicemembers receive Basic Allowance for Housing (BAH) that goes directly to their housing providers to cover their rent and utilities in either government-owned or privatized military base housing. Military families can also use their BAH to rent a home off base, though they may have to pay out of pocket for the difference between the value of the BAH and the private market rent.[34] In the total absence of definitions in the current NPRM, active servicemembers have no protection against the inclusion of their BAH or other forms of assistance as a negative factor in a public charge determination.

- **USDA Farm Labor Housing** – USDA'S Farm Labor Housing program provides housing for very low-, low, or moderate-income domestic farm laborers who receive a substantial portion of their income from agriculture. The housing is often provided by the employer incidental to the job. To be eligible for the housing the farm laborer must be a U.S.

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[31] HUD, Emergency Housing Vouchers: Frequently Asked Questions (FAQs) v.9, at 2 (Jan. 29, 2025), https://www.hud.gov/sites/dfiles/PIH/documents/EHV-FAQ-v9-1-30-25.pdf.

[32] HUD, Violence Against Women Reauthorization Act of 2013 Guidance (May 19, 2017), https://www.hud.gov/sites/documents/pih-2017-08vawra2013.pdf.

[33] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/page-41501

[34] U.S. Army, Basic Allowance for Housing (BAH) Benefit Fact Sheet (last visited Dec. 19, 2025), https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Basic-Allowance-for-Housing-(BAH)?serv=122.

citizen, permanent resident, or legally admitted to the United States and authorized to work in agriculture. In some cases, very low-income farm labor households may also receive Section 521 rental assistance to ensure the rent is affordable.[35] Because the current NPRM lacks a definition of what constitutes a "public benefit," a DHS officer could include in their public charge determination occupancy in farm labor housing that was provided as a condition of someone's employment contract and regardless of whether the household received rental assistance. This would also make it harder for farmers to employ farmworkers who were concerned that their housing incidental to employment could be counted against them or a family member in a future public charge determination.

**d. The NPRM fails to justify its departure from the "primarily dependent" standard of public charge admissibility.**

Moreover, even if the Department provided a clear definition of means-tested benefits, it must justify its departure from the long-accepted "primarily dependent" standard to the consideration of any means-tested benefits. The reason that cash assistance for subsistence and institutionalization for long-term care have been the only benefits considered in the public charge assessment is that other benefits – even those that are means-tested -- have been recognized as supplemental.[36] For example, in many states, children in families with incomes greater than three times the federal poverty level are eligible for Medicaid and CHIP, in acknowledgement that this health coverage is meant to support children in families with parents who work.[37] As the judge in one of the 2019 lawsuits noted, the inclusion of these programs reflects an "absolutist sense of self-sufficiency that no person in a modern society could satisfy."[38]

The proposed rule asserts that use of any benefit is relevant to a public charge assessment, but neither provides a logical argument nor offers data to support this claim. A sense of the overreach of this statement rule is offered by an analysis of the 2018 proposed rule that found that more than half of all U.S. born citizens could have been found at risk of becoming a public charge if the rule were applied to them. This is because that rule, like the proposed rule, allowed the consideration of supplemental benefits that are widely used by working individuals and their families.[39]

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[35] USDA Rural Development, Farm Labor Housing Direct Loans & Grants (Jan. 2020), https://www.farmfoundation.org/wp-content/uploads/2020/11/USDA-RD-Farm-Labor-Housing-Direct-Loans-Grants-Factsheet.pdf.

[36] 1999 NPRM.

[37] KFF, *Medicaid and CHIP Income Eligibility Limits for Children as a Percent of the Federal Poverty Level*, January 2025, https://www.kff.org/affordable-care-act/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Upper%20Income%20Limit%22,%22sort%22:%22desc%22%7D

[38] *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208, 232 (7th Cir. 2020).

[39] Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.* Center on Budget and Policy Priorities, 2019. https://www.cbpp.org/sites/default/files/atoms/files/5-30-19pov.pdf.

HUD housing assistance are supplemental benefits and therefore would not meet the "primarily dependent" standard historically used in the public charge assessment. In total, HUD's federal housing assistance programs serve approximately 4.5 million households, at least 281,300 of which have a non-citizen residing at the home. The public housing and Housing Choice Voucher programs have been shown to help improve the long-term outcomes for teenagers whose families receive such housing assistance, resulting in higher earnings and a reduced likelihood of incarceration later in life.[40] In New York, a study showed that federal housing assistance lifted more than 150,000 people out of poverty, reducing the poverty rate among recipients by roughly a third (from 55% to 37%)."[41]

Roughly two-thirds of the working age, non-disabled persons in the households receiving HUD federal rental assistance are employed. In fact, the typical working household receiving this assistance is a family with two school-age children and a parent who works at a low-wage job that does not pay enough to cover the market rent for a modest apartment.[42] The Council of Large Housing Authorities calculated that the housing authorities in six cities (Akron, Ohio; Charlotte, North Carolina; Kansas City, Missouri; Los Angeles, California; New York City, New York; and Oklahoma City, Oklahoma) were effectively providing over $1 billion in direct subsidy to industries that rely on entry-level and low-wage workers in their regions. Without access to public housing or vouchers, many of these workers would not be able to afford living near their employers and would have to move further away from these regional employment hubs, especially as rents continue to outpace wage growth. This would in turn impact their ability to show up consistently for their employer due to increased costs and time spent on commuting.[43]

**2. Proposed rule opens door to consideration of benefits used by family members, including children**

The proposed rule appears to leave room for officers to consider benefits used by family members who are not seeking to adjust their status. The rule removes the regulatory definition of "receipt (of public benefits)" (8 CFR Part 212.21(d)) that explicitly states that applying for or

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[40] Urban Institute, Subsidized Housing Improves Adulthood Outcomes for Teenage Recipients (May 24, 2023), https://housingmatters.urban.org/research-summary/subsidized-housing-improves-adulthood-outcomes-teenage-recipients (summarizing Henry O. Pollakowski et al., Childhood Housing and Adult Outcomes: A Between-Siblings Analysis of Housing Vouchers and Public Housing, Am. Econ. J.: Economic Policy (2022)).

[41] Anastasia Koutavas et al., SPOTLIGHT: HOUSING AFFORDABILITY AND THE THREAT OF CUTS TO FEDERAL HOUSING ASSISTANCE PROGRAMS (2025), https://robinhood.org/wp-content/uploads/2025/07/PT_Housing-Affordability_FINAL7.15.2025.pdf

[42] *See* Alicia Mazzara & Barbara Sard, *Chart Book: Employment and Earnings for Households Receiving Federal Rental Assistance*, Ctr. on Budget & Policy Priorities, 1 (Feb. 5, 2018), https://www.cbpp.org/sites/default/files/atoms/files/2-5-18hous-chartbook.pdf; *U.S. Federal Rental Assistance Fact Sheet,* Ctr. on Budget & Policy Priorities, 1-2 (May 14, 2019), https://apps.cbpp.org/4-3-19hous/PDF/4-3-19hous-factsheet-us.pdf.

[43] COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES, THE ECONOMIC IMPACT OF PUBLIC HOUSING: ONGOING INVESTMENT WITH WIDE REACHING RETURNS (Oct. 2018), https://clpha.org/sites/default/files/documents/EconomicImpactPublicHousing_final2_digital_0.pdf

receiving benefits on behalf of family members is not considered "receipt." It also fails to provide such reassurance in the preamble, as the 2019 final rule did.[44]

Without that clear language, it is impossible for immigrants to know whether use of benefits by family members – including U.S. citizen children – will harm them when they seek to obtain LPR status, or for providers to offer them meaningful reassurance. Moreover, the affirmative choice to remove this clear statement from the regulations sends a message that DHS does intend for immigration officials to consider family members' use of benefits that is far stronger than if such exclusion had never been part of the regulations. The NPRM provides no justification for this removal.

Allowing consideration of benefits used by family members will especially harm immigrant families living in HUD-assisted housing. To be eligible for certain HUD-assisted housing (including public housing, vouchers, and Section 8 Project-Based Rental Assistance),[45] a family must have one member of a household who is a citizen or who has eligible immigration status as established in 42 U.S.C. 1436a(a). In some immigrant families, each family member is either a citizen or a noncitizen with an eligible immigration status. If one of these members has an eligible immigration status other than a legal permanent resident, it is unfair to include HUD housing assistance as a negative factor in the public charge determination when this person meets all the eligibility requirements that Congress created.

Also deeply unfair is the harm that will fall on mixed status families living in HUD-assisted housing. If any household members lack the requisite citizenship or eligible immigration status,[46] the housing assistance for such a "mixed-status" family is prorated to exclude that household member.[47] By prorating assistance, Congress ensures that the housing assistance only covers eligible household members. The average mixed-status family includes two parents and two children, where the children and one parent are U.S. citizens, while the other parent does not claim eligibility.[48] One potential reason for not claiming eligibility is that the parent is here on a temporary visa, which is not an eligible immigration status under Section 214. In affirming the availability of prorated housing assistance for such families, Congress recognized the American values of keeping families together, whole and housed. The DHS Proposed Rule, however, undermines this carefully-calibrated arrangement by including the prorated housing assistance in the public charge determination, even though the assistance does not cover the parent who did not claim eligibility. Fear of this outcome could cause mixed-status families to refrain from applying for HUD housing assistance for which they are otherwise eligible and force families to consider foregoing assistance that would keep children off the streets.

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[44] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-499. Of note, the 2019 final rule discussed this reassurance in the context of arguing that the rule could not be considered to discriminate against certain citizen children on the basis of their parents' nationality, as their receipt of benefits would not be considered in the public charge assessment.

[45] 42 U.S.C. §1436a.

[46] Id. at §1436a(a) (enumerating eligible immigration statuses).

[47] 24 C.F.R. § 5.520.

[48] ERIK GARTLAND & SONYA ACOSTA, ADMINISTRATION PLAN TARGETING IMMIGRANTS WOULD TAKE AWAY RENTAL ASSISTANCE, CREATE NEW BARRIERS 4 (Dec. 12, 2025), https://www.cbpp.org/sites/default/files/12-12-25hous.pdf.

We strongly believe that receipt of benefits as a child should not be considered in the public benefits determination as it bears little relationship to their future likelihood of receiving benefits. If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school will decrease future reliance on benefits and will contribute to the future integration of kids who grow up, develop, learn and complete their education and training in the United States. The value of access to public benefits, such as housing assistance, in childhood has been documented repeatedly.

A lack of access to affordable housing remains one of the main barriers to economic stability for many families. Housing costs continue to increase in the United States, yet family income has not kept pace. The proposed rule would further limit access to housing assistance for families with children. The primary housing assistance programs that serve families with children, Section 8 Housing Choice Vouchers, Section 8 Project Based Rental Assistance and Public Housing are all explicitly included in the rule. Of households currently receiving rental assistance, 56% include children.[49] Research shows that rental assistance for households with children results in significant positive effects for future child outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year, and can improve a child's chances for long-term economic mobility. One study finds that children in households receiving Housing Choice vouchers have higher adult earnings and a lower chance of incarceration.[50] Housing assistance also improves child health—children of families receiving housing assistance had a 35% higher chance of being labeled a "well child," a 28% lower risk of being seriously underweight, and a 19% lower risk of food insecurity.[51]

**B. Strong reliance interests have developed on the part of immigrant families, state and local governments, and a wide array of institutions on the policies clarified in 1999 and formalized in the 2022 regulations.**

The Department acknowledges that "the regulated public may be relying on aspects of the regulatory scheme in the 2022 Final Rule, which, in many respects substantively aligns with the 1999 Interim Field Guidance"[52] and seeks comments on what aspects of the 2022 Final Rule might have engendered reliance interests, and how DHS should best address such reliance interests given its stated objective for the rulemaking.

Key elements that have engendered reliance interests are:

- The statement that no benefits would be considered other than cash assistance for income maintenance and institutionalization for long term care;
- The statement that applications for or use of benefits by family members would not be considered in a public charge determination; and

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[49] CTR. ON BUDGET & POLICY PRIORITIES, *United States Federal Rental Assistance Fact Sheet*, (Jan. 2025), https://www.cbpp.org/sites/default/files/atoms/files/12-10-19hous-factsheet-us.pdf.
[50] Fredrik Andersson et al., *Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing*, NAT'L BUREAU OF ECON. RESEARCH WORKING PAPER NO. 22721, (revised Sept. 2018), http://www.nber.org/papers/w22721.
[51] Elizabeth March, *Rx for Hunger: Affordable Housing,* CHILDREN'S HEALTH-WATCH & MEDICAL-LEGAL PARTNERSHIP (Dec. 2009), http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf.
[52] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-412.

- The provisions excluding use of benefits while in an immigration status that is not subject to a public charge assessment.

We repeat our concern that the rule does not include a clear statement that any changes in the policy, whether through regulation or guidance, will be only forward-looking, and that immigration officers will be directed not to consider any benefits received during a time when the stated policy of the United States was that use of such benefits would not have adverse immigration consequences. Such a statement was included in the 2018 notice of proposed rulemaking[53] and the 2019 final rule:

> "as stated in this final rule, DHS will not apply the new expanded definition of public benefit to benefits received before the effective date of this final rule. Therefore, any benefits received before that date will only be considered to the extent they would have been covered by the 1999 Interim Field Guidance. In the commenter's example, SNAP benefits received by an alien prior to the effective date of the final rule would not be considered as part of the alien's public charge inadmissibility determination, because SNAP was not considered in public charge inadmissibility determinations under the 1999 Interim Field Guidance."[54]

The lack of such clarity in this proposal is deeply alarming and creates immediate confusion and concern.

**C. The withdrawal of regulations to be replaced eventually by unspecified guidance and tools is an attempt to make an end run around the Administrative Procedure Act.**

DHS's proposal to rescind the current public charge rule without a regulatory alternative and to rely on future sub-regulatory guidance flouts the agency's obligations under the Administration Procedures Act.

**DHS's proposal deprives the public of a meaningful opportunity to comment.** Despite providing a comment period, DHS provides very little substantive information to comment about. DHS makes conclusory statements that the 2022 Final Rule is inconsistent with administrative policy and with PRWORA and removes the entire public charge admissibility framework as it stands – but offers nothing in its place.

Furthermore, DHS offers no justification of its decision to include receipt of housing assistance, even though this change departs drastically from the historical exclusion of housing benefits from the public charge determination. Courts have long held "the notice required by the APA ... must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based," which DHS has failed to do here. DHS has not even provided a basic definition of "public benefit" for the public to assess.

Without a proposed definition, we at the National Housing Law Project lack a meaningful opportunity to share our expertise on the multitude of housing assistance programs and whether they should or should not be a part of the public charge assessment. Although we offer some arguments earlier in the comment, these arguments are not grounded in concrete regulatory

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[53] 2018 NPRM: https://www.federalregister.gov/d/2018-21106/p-1274.
[54] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-627.

proposals by DHS. Without more information or insight into the agency's analysis, the public, including NHLP, is deprived of the meaningful opportunity to comment as required by the APA.

The Department states that it will, following the finalization of the proposed rule, "formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien's circumstances, that are consistent with the statute and congressional intent, and comply with past precedent."[55] But the policy and tools are not provided now, and the rule provides no indication that the Administration intends to submit them to public comment and review. The withdrawal of the existing rule will cause harm immediately. Even in the unlikely event the promised policy and interpretive tools would significantly lessen those harms, DHS has shown no justification for withdrawing the existing rule before the new policy and interpretive rules are ready.

**Furthermore, by describing the future tools as "interpretive," the Department inaccurately suggests that this sub-regulatory guidance will constitute an "interpretive rule" under the APA**, for which formal notice-and-comment rulemaking is not required. Interpretive rules "advise the public of the agency's construction of the statute and rules which it administers"[56] By contrast, substantive rules are "complementary to existing law"[57] and "grant rights, impose obligations, or produce other significant effects on private interests" by "constrict[ing] the discretion of agency officials."[58] Importantly, "[a] rule that effectively amends a prior legislative rule is a legislative, not an interpretative rule."[59]

To the extent that the future sub-regulatory guidance referenced provides standards, procedures, or considerations that DHS officers must follow in making their public charge determinations, it is a substantive rule that requires notice and comment rulemaking. DHS's attempt to create a regulatory void through this formal rulemaking, only to fill that void with sub-regulatory guidance, violates the APA.

It appears that the policy guidance that will be developed will serve as a regulation in all but name, and that this is an attempt to maneuver around the required public notice and comment and flout the DHS's obligations under the Administrative Procedures Act.[60] Any guidance or tools that are created to direct officers' legal decisions should be made available for notice and

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[55] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-105.

[56] Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 97, 135 S. Ct. 1199, 1204, 191 L. Ed. 2d 186 (2015) (quoting Shalala v. Guernsey Memorial Hospital, 514 U.S. 87, 99, 115 S.Ct. 1232, 131 L.Ed.2d 106 (1995)).

[57] Gibson Wine Co. v. Snyder, 194 F.2d 329, 331 (D.C. Cir. 1952).

[58] Batterton v. Marshall, 648 F.2d 694, 701–02 (D.C. Cir. 1980)

[59] Nat'l Min. Ass'n v. Jackson, 768 F. Supp. 2d 34, 48 (D.D.C. 2011)

[60] "It is well-established that an agency may not escape the notice and comment requirements … by labeling a major substantive legal addition to a rule a mere interpretation….We must still look to whether the interpretation itself carries the force and effect of law, ... or rather whether it spells out a duty fairly encompassed within the regulation that the interpretation purports to construe." *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1024 (D.C. Cir. 2000); *see also General Electric Co. v. EPA*, 290 F.3d 377 (D.C. Cir. 2002).

comment because of their significant impact on the legal rights of applicants.[61] Simply asking for open-ended feedback and recommendations on what to include in such tools is not a substitute for notice and comment.

This is especially true in the context of housing assistance. At the federal level, there are dozens of different housing assistance programs. They take a variety of forms ranging from direct rental assistance to tenants to units with below-market rents made possible by mortgage subsidies or tax credits. Each program comes with its own set of technical rules, which often differ in subtle but important ways. Complicating matters further, it is a common practice for affordable housing to have multiple subsidies attached, which means that different sets of rules can apply to the same building or even the same unit. Identifying the subsidies for a given unit or building is not as simple as asking the tenant. Tenants may know that their unit is subsidized but have no idea what the source of the subsidy is, especially if the affordability terms are buried in mortgages and deeds that are not in the tenant's possession. Given the multitude of housing assistance programs, the varying technical rules underlying each program, the high likelihood of layered subsidies in affordable housing, and the difficulty that even subsidized tenants have in identifying their assistance, it would be critical for DHS to subject its proposed inclusion of housing assistance to notice-and-comment to ensure proper implementation. But not only has DHS not included housing assistance with any specificity in its proposed rule – it hasn't even indicated whether a future policy or interpretative tool on housing assistance is even a possibility. Clearly, this administration is trying to insulate its overbroad inclusion of housing assistance and other previously-excluded benefits from judicial review, which the APA simply does not allow.

**D. The rescission is not supported by reasoned analysis**

The Proposed Rule represents a dramatic change of position from both the 2022 Final Rule and the previous Trump Administrations' 2019 Final Rule, which DHS now finds "too restrictive."[62] An agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change.[63] This includes a showing that it has considered alternatives to the rescission action in achieving its goals and sufficiently addressed the serious reliance interest of entities and individuals.[64] The administration provides inadequate explanation of the factual basis for its change of position.

First, the proposed rule asserts that "removing the current regulations would provide DHS greater flexibility to adapt to changing circumstances," such as "Federal and State changes to aliens' eligibility for means-tested public benefits as well as changes to the value of those benefits" and the legislative changes that recently occurred under H.R. 1.[65] But an agency does not satisfy the requirements of the APA where it justifies the repeal of a rule on "predicted future

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[61] Administrative Conference of the United States. *Interpretive Rules of General Applicability and Statements of General Policy*. Recommendation 76-5. n.d. Accessed November 25, 2025. https://www.acus.gov/sites/default/files/documents/76-5.pdf.

[62] Public Charge Ground of Inadmissibility, 90 Fed. Reg. 52168, 52185 (Nov. 19, 2025).

[63] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

[64] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2019).

[65] 2025 NPRM, https://www.federalregister.gov/d/2025-20278/p-287.

actions" that might change eligibility for benefits.[66] For example, the administration's attempt change exemptions to verification requirements under the Personal Responsibility and Work Opportunity Act (PRWORA) is enjoined in 20 states plus the District of Columbia as of September 10, 2025,[67] and it is unclear when, if ever, these "federal . . . changes to aliens' eligibility" will go into effect. Moreover, the Administration fails to explain how legislative changes that generally *reduce* eligibility for public benefits for certain categories of immigrants require the rescission of the 2022 Final Rule.

Second, in the event that new and changing laws do require a change to the existing public charge rule, it is important to note that DHS's proposed rescission does not effect such a change. In withdrawing the existing rule, DHS does not even provide immigration officers with any intelligible principle to guide the discretion. The exercise of such discretion is certain to produce arbitrary and capricious outcomes when applied to individuals currently or formerly participating in such a wide range of housing programs all across the country. The superior solution is to modify the regulations as needed in response to new laws, not to avoid regulations entirely. Indeed, there is no indication that DHS considered any regulatory alternatives to rescinding the 2022 Final Rule, even though courts have held that "[a]n agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives." Here, the clear alternative is for DHS to specifically list which specific housing programs may contribute to a determination of public charge, at what level of participation, whether past participation will be considered or prospective only.

**E. The rule suggests that USCIS will rely on illegally obtained data and unproven tools**

The proposed rule states "as the administration persists in its efforts to reduce the siloing of data, DHS anticipates working toward the integration of immigration records with records from Federal benefit-granting agencies. The analysis of that data will inform the development of the flexible and adaptive policy and interpretive tools that will guide future public charge inadmissibility determinations."[68] This paragraph suggests that DHS plans to build a tool that officers will use as they make public charge determinations.

This is particularly alarming in the context that DHS has been illegally obtaining information from the Internal Revenue Service (IRS)[69] and benefit granting agencies, including the Social

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[66] California by & through Becerra v. United States Dep't of the Interior, 381 F. Supp. 3d 1153, 1171 (N.D. Cal. 2019)

[67] New York v. U.S. Dep't of Just., No. 1:25-CV-00345-MSM-PAS, 2025 WL 2618023 (D.R.I. Sept. 10, 2025) (under appeal).

[68] 2025 NPRM, https://www.federalregister.gov/d/2025-20278/p-287.

[69] *Center for Taxpayer Rights vs. Internal Revenue Service*, 1:25-cv-00457, (D.D.C.) https://www.courtlistener.com/docket/69646607/center-for-taxpayer-rights-v-internal-revenue-service/.

Security Administration[70] and the state agencies that operate SNAP[71] and Medicaid.[72] This data is being linked without required privacy safeguards and with reckless disregard for accuracy.[73] Misreading of this data has already generated ludicrous results, such as the claim that hundreds of 150-year-olds are claiming Social Security benefits.[74] Using this data in public charge assessments, where there is no opportunity for appeals, is both dangerous and illegal.

Similarly, HUD has demonstrated an eagerness to share information about the residents in its housing assistance programs for immigration enforcement purposes,[75] even though it is unlawful to share such information for purposes other than eligibility determinations. HUD has gone so far as to propose sharing individual tenant files,[76] even though such files contain sensitive information, including information about survivors of domestic violence and other forms of gender-based violence subject to heightened privacy protections for under the Violence Against Women Act (VAWA).[77] Such data has no place in a DHS interpretative tool or any public charge determination.

It is possible that the planned tool may be an automated decision-support tool that makes recommendations to immigration officers.[78] Empirical research shows that automated decision systems reflect the biases and errors of the underlying data.[79] Moreover, when they are not directly programmed, but emerge out of existing data, they act as a "black box." Without

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[70] Social Security Administration, Privacy Act of 1974, System of Records, 90 FR 50879, November 11, 2025. https://www.federalregister.gov/documents/2025/11/12/2025-19849/privacy-act-of-1974-system-of-records.

[71] *State of California v. United States Department of Agriculture,* 3:25-cv-06310, (N.D. Cal.). https://www.courtlistener.com/docket/70945300/state-of-california-v-united-states-department-of-agriculture/.

[72] *State of California v. U.S. Department of Health and Human Services,* 3:25-cv-05536 (U.S. District Court for the Northern District of California). https://clearinghouse.net/case/46754/

[73] Makena Kelly and Vittoria Elliott, "DOGE Is Building a Master Database to Surveil and Track Immigrants," *Wired*, 18 April 2025. https://www.wired.com/story/doge-collecting-immigrant-data-surveil-track/.

[74] David Gilbert. "No, 150-Year-Olds Aren't Collecting Social Security Benefits." Tags. *Wired*, February 17, 2025. https://www.wired.com/story/elon-musk-doge-social-security-150-year-old-benefits/.

[75] Memorandum of Understanding Between United States Department of Homeland Security and United States Department of Housing and Urban Development (Mar. 24, 2025), https://www.hud.gov/sites/default/files/PA/documents/DHS-HUD-MOU-032425.pdf.

[76] Christian Datoc, HUD Threaten Funding for Public Housing Authorities Shielding Illegal Immigrants, Washington Examiner (Aug. 27, 2025), https://www.washingtonexaminer.com/news/white-house/3784818/hud-threatens-funding-public-housing-authorities-illegal-immigrants/.

[77] See Leslye E. Orloff, National Immigrant Women's Advocacy Project, VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections, https://www.lsc.gov/sites/default/files/LSC/pdfs/10.%20%20Appendix%20IX%20%20CH%203%20SA_Confidentiality_Final.pdf.

[78] Estafania McCarroll. "Weapons of Mass Deportation: Big Data and Automated Decision-Making Systems in Immigration Law," *Georgetown Immigration Law Journal*, 34, pp. 705–731, 2020. https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2020/08/Weapons-of-Mass-Deportation-Big-Data-and-Automated-Decision-Making-Systems-in-Immigration-Law.pdf

[79] Virginia Eubanks. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Press, 2019.

knowing what information they are actually relying on to make decisions and how it is being weighted, the public cannot assess the logic behind recommendations or hold it accountable.[80]

We at the National Housing Law Project have significant experience with automated decision-support tools that provide recommendations to housing providers on whether to admit or deny applicants to rental housing Our experience includes litigating these federal cases and advancing federal policy under anti-discrimination and consumer protection theories.

By and large, automated decision-support tools in the tenant screening context suffer from two major problems. One is that automated decision tools are plagued by inaccuracies. Such tools rely upon recordkeeping in bureaucracies, such as the criminal legal system or the eviction court system, that is prone to incompleteness, redundancy, and clerical/data entry errors. The records themselves are subject to interpretation, such as the classification of criminal records into different categories an automated system uses to apply decision filters. Inaccuracies and inconsistencies are compounded by the fact that records systems differ from jurisdiction to jurisdiction and there are no unifying recordkeeping methods or customs across localities, states, and the federal government. Even assuming the underlying records themselves are free of errors, limitations in available personal identifiers and in the matching logic by which particular records are attributed to specific persons frequently results in mismatches. Error detection in automated systems is further complicated both by the lack of transparency in how records are sorted and filtered, as well as by the complexity that may render an error embedded in the underlying data indiscernible.

A second problem is bias. Automated systems that apply decision-filters tend to reproduce discriminatory decisions that led to the creation of the underlying records. It is well-documented, for instance, that Black individuals tend to be arrested and charged with illegal drug offenses far more often than white individuals, despite similar rates of illegal drug use.[81] Hence an automated system that is programmed to automatically decline Black individuals based on criminal records for drug offenses will transfer the discrimination in the enforcement of drug laws to the new matter in which the automated system is being applied—be that housing admission, admission to the United States, or adjustment of immigration status.

Any automated-decision support tool that attempts to collect records from multiple public benefits systems administered by multiple states will result in similar types of errors and at a grand scale. Since immigrants are not assured of any disclosure or appeal rights attached to the tool, immigrants affected by errors will seldom if ever have any means of determining that such errors even occurred, let alone identifying what the errors specifically were. No provision is made to prevent or address bias resulting from the use of this tool.

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[80] David Freeman Engstrom, and Daniel E. Ho. “Algorithmic Accountability in the Administrative State.” *Yale Journal on Regulation,* 37, no. 3 (2020). https://www.yalejreg.com/print/algorithmic-accountability-in-the-administrative-state/.

[81] *See, e.g.,* Nazgol Ghandnoosh, “One in Five: Disparities in Crime and Policing,” The Sentencing Project (Nov. 2, 2023), https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing/.

**F. The lack of guardrails gives DHS officers an unworkable framework for making public charge determinations.**

In the NPRM, DHS states that, in the absence of any public charge rule, the agency "believes that the statute, PRWORA, and the governing caselaw would provide sufficient guidance to officers to consider all relevant case-specific circumstances in their discretion" during the period when DHS is developing its "policy and interpretative tools."[82] This conclusory statement, however, ignores the current state of flux around PRWORA and its application to public benefits. This is of particular import in the context of housing benefits because of HUD's November 2025 notice interpreting the term "federal public benefit" under PRWORA.[83] Ultimately, this notice raises more questions than it answers. First, although the NPRM mentions PRWORA repeatedly, it is completely silent on the relationship between the various PRWORA notices issued by the administration this year and the NPRM, making it challenging to understand the ways that the HUD PRWORA Notice impacts the public charge analysis, if any.[84] Second, in litigation brought by state attorneys general from multiple states, the Trump administration has agreed to refrain from enforcing these notices, including the HUD PRWORA Notice, until their legality is adjudicated by the courts.[85] The administration's PRWORA notices, therefore, are not in effect and therefore should not factor into any public charge assessment. Third, PRWORA includes several statutory exceptions to its definition of "federal public benefit," some of which are also in flux because of pending litigation.[86] It is also unclear what relevance, if any, these exceptions have to public charge. Given the various changes and legal challenges related to PRWORA this year, it is unrealistic to expect that PRWORA by itself will provide everyday DHS officers with sufficient guidance on how to conduct lawful public charge determinations.

**II. The chilling effect of the proposed rule would cause significant and permanent harm**

The chilling effect of this change will be significant and deeply harmful. This is a logical prediction, based on both historical evidence and what reasonable people would do given the lack of certainty and hostile indications provided by the current proposal.

**A. Historical evidence shows large chilling effects that could be even larger today.**

**1. Chilling effects of the 2019 Trump public charge rule**

The chilling effect of the 2019 rule is difficult to measure with participation data, because the rule was in effect for only a limited time, and the confounding effects of the COVID-19 pandemic, with the resulting widespread shutdowns and expansions of temporary benefits, make it hard to

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[82] 2025 Proposed Rule: https://www.federalregister.gov/d/2025-20278/page-52188

[83] HUD Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit", 90 Fed. Reg. 54,363 (Nov. 26, 2025) (hereinafter "HUD PRWORA Notice"].

[84] *See, e.g.*, HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit." 90 Fed. Reg. 31,232 (July 14, 2025); USDA Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit", 90 Fed. Reg. 30,621 (July 10, 2025).

[85] Stipulation, at 2, *New York v. U.S. Dep't of Just.*, Case No. 1:25-cv-00345 (D.R.I. Dec. 8, 2025).

[86] 8 U.S.C. § 1642(d).

isolate the effects of this policy change. The best data is therefore from surveys that ask immigrants or members of immigrant families directly whether they avoided participating in public benefit programs because of concerns about immigration consequences. There are, however, some relevant studies that focus on participation changes before the start of the pandemic. These generally measure the effect of the announcement of the 2018 rule, or of the earlier widespread media coverage of the proposal.

Starting in 2018, researchers at the Urban Institute have conducted a regular survey, the Well-Being and Basic Needs Survey (WBNS), that includes questions about whether adults in immigrant families (i.e., in which the respondent or a family member living with them was not born in the US) avoided participating in non-cash safety net programs because of green card concerns. Non-cash safety net programs included housing subsidies, as well as Medicaid, the Children's Health Insurance Program (CHIP), and SNAP. This survey series confirms that the chilling effect influenced families even before the 2019 rule was finalized and continued to affect program participation even after the 2019 rule was withdrawn and replaced with the 2022 rule. Key findings include:

- In 2019, 15.6 percent of adults in all immigrant families, and 31 percent of adults in families that included one or more nonpermanent residents, reported avoiding applying for non-cash benefits, including housing subsidies.[87] This was higher, 26.2 percent, among low-income immigrant families.

- Among adults surveyed who avoided noncash government benefit programs because of green card concerns, more than one-third of these adults reported that their family avoided housing subsidies.[88]

- The chilling effect was twice as strong for families with children, at 20.4 percent for immigrant families with children in 2019 vs. 10.0 percent for immigrant families without. For low-income families with children, it was 31.5 percent. Similar gaps existed in other years. This is likely because families with children are more likely to have a member eligible for such benefits. The survey also found that 76.8 percent of adults in immigrant families with children did not understand that children's program enrollment would not be considered in their parents' public charge determinations. Chilling effects were reported across a variety of forms of support, including programs not specified in the rule such as WIC, free or reduced price school lunch, free or reduced-price medical care for uninsured people, and health insurance purchased through the Marketplaces.[89]

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[87] Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019.

[88] Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, and Dulce Gonzalez, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, at 6, Urban Institute, 2020. https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019.

[89] Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, and Dulce Gonzalez, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019.

- Even in 2023, after the 2022 rule was fully in place, and before the re-election of Donald Trump, 11.7 percent of adults in all immigrant families, and 23.6 percent of adults in mixed-immigration status families, reported avoiding applying for non-cash benefits, including housing subsidies.[90]

- The chilling effect reached even members of immigrant families in which all members of the family were citizens (6.7 percent in 2019) or in which all noncitizen members were permanent residents (16.7 percent in 2019).[91] This was a consistent pattern in all years of the survey series.

Researchers at KFF have conducted surveys with similar questions since 2023. The most recent was conducted in the fall of 2025 (prior to the publication of the proposed rule) and was just released. This study, for which all of the respondents were themselves immigrants (including naturalized citizens),[92] includes these key findings:

- The share of immigrant adults who said they avoided applying for a government program that helps pay for food, housing, or health care in the past 12 months because they did not want to draw attention to their or a family member's immigration status rose from 8% to 12% between 2023 and 2025. Eleven percent said that they have stopped participating in such a program since January 2025 because of immigration-related worries.

- Among parents, the share who say they avoided applying for a program rose from 11% to 18%. This suggests that even though the survey did not explicitly say to include benefits received on behalf of a child, the respondents did so.

**B. The Direct Impact of the Proposed Rule Will Hurt Hundreds of Thousands of Immigrant Families**

1. Housing stability is critical to getting families on a pathway to self-sufficiency and leads to better life outcomes.

The proposed rule threatens to undermine the overall well-being of low- and moderate-income immigrants and their families. The proposed rule will steer many immigrants away from applying for critical housing assistance, and those already participating in these programs will feel compelled to give up the lifeline assistance that helps their families avoid homelessness. Immigrant families, faced with the threat of separation, will be forced to disenroll from housing

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[90] Dulce Gonzalez, Hamutal Bernstein, Michael Karpman, and Genevieve M. Kenney. *Mixed-Status Families and Immigrant Families with Children Continued Avoiding Safety Net Programs in 2023*. Urban Institute, 2024. https://www.urban.org/research/publication/mixed-status-families-and-immigrant-families-children-continued-avoiding.

[91] Bernstein et al. 2020, op cit. (Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019.)

[92] Drishti Pillai et al. *KFF/New York Times 2025 Survey of Immigrants: Health and Health Care Experiences During the Second Trump Administration*. KFF, 2025. https://www.kff.org/immigrant-health/kff-new-york-times-2025-survey-of-immigrants-health-and-health-care-experiences-during-the-second-trump-administration/.

assistance programs under the public charge rule, causing increased rates of homelessness and unstable housing among an already vulnerable population.[93] Reduced access to other work supports like healthcare or nutrition will also make it harder for this at-risk population to pay rent or remain in private housing.

This outcome will not only hurt these families while they struggle to find housing in the short term, but will lead to reduced opportunities and increased health problems for these families in the long term.[94] Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and mental health problems.[95] Having safe and stable housing is crucial to a person's good health, their ability to sustain employment, and overall self-sufficiency. These effects will be particularly prominent in children, many of whom are U.S. citizens, who are part of immigrant families. Research has shown that economic and housing instability negatively impacts children's cognitive development, leading to poorer life outcomes as adults.[96] Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life.[97]

2. Inclusion of non-housing benefits directly threatens housing stability.

The rule's inclusion of non-housing benefits poses a direct threat to immigrants' housing stability. Housing subsidies work in tandem with other critical public benefits programs to ensure that working families can attain a stable existence.[98] Families with access to both housing subsidies and other assistance programs—such as SNAP or WIC—are 72% more likely to

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[93] PRATT CTR. FOR CMTY. DEV., CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO (2018), https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do.

[94] Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1 (2018), http://pediatrics.aappublications.org/content/141/2/e20172199.

[95] *See* Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR. ON BUDGET & POLICY PRIORITIES (October 7, 2015), https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains; *see also* Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund* (Jan. 2015), http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPol iciesProposedbytheChildrensDefenseFund.pdf.

[96] HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS (2013), https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF.

[97] *See* Mai Abdul Rahman, The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education 55 (Mar. 2014) (Ph.D. dissertation, Howard University), http://gradworks.umi.com/3639463.pdf (citations omitted).

[98] Barbara Lipman, *Something's Gotta Give: Working Families and the Cost of Housing*, CTR. FOR HOUSING POLICY (2005); Helen Levy & Thomas DeLeire, *What Do People Buy When They Don't Buy Health Insurance and What Does That Say About Why They Are Uninsured?*, NBER WORKING PAPER NO. 9826 (2003).

have stable housing.[99] Research has also shown that low-income individuals that have access to affordable health care coverage are 25% less likely to miss paying their rent or mortgage on time.[100] The loss of critical food, health care, and housing assistance would decrease not only women's economic stability, but also that of their families, including children. Given that the inclusion of any of the proposed programs to be covered under the rule will lead to dire housing consequences for immigrants and their families, non-cash programs should not be considered under the rule, and DHS should withdraw the proposed rule in its entirety.

**3. Today's environment will produce even greater chilling effects.**

The chilling effect of the new proposed rule is likely to be even greater today because of fears in immigrant communities due to the extensive threats they are experiencing. These different fears reinforce each other. Research has found that experience with immigration enforcement increases noncitizens' concerns about public charge. Specifically, having stayed inside to avoid police or immigration officials, having been asked to show proof of citizenship by law enforcement, and knowing someone who has been deported were all found to increase concerns about accessing public benefits related to public charge.[101]

These are all increasingly common experiences today. In KFF's fall 2025 survey, 22% of immigrants said that they personally knew someone who has been arrested, detained or deported on immigration related charges since January, nearly three times as many as in April. Three in ten reported that they or a family member have limited their participation in activities outside the home since January due to concerns about drawing attention to someone's immigration status.[102]

The chilling effect is also accentuated by DHS' efforts to access data about taxpayers from the Internal Revenue Service (IRS)[103] and about benefit recipients from the Social Security Administration[104] and the state agencies that operate SNAP[105] and Medicaid.[106] These efforts are in violation of privacy laws, and break explicit promises that the federal government has

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[99] Megan Sandel et al., *Co-enrollment for Child Health: How Receipt and Loss of Food and Housing Subsidies Relate to Housing Security and Statutes for Streamlined, Multi-subsidy Application,"* 5 J. APPLIED RESEARCH ON CHILDREN 2 (2014).

[100] *See* Kriston Capps, *For the Poor, Obamacare Can Reduce Late Rent Payments*, CITYLAB (Dec. 4, 2018), https://www.citylab.com/equity/2018/12/obamacare-health-insurance-housing-rent-payments/577099/.

[101] Lei Chen, Maria-Elena De Trinidad Young, Michael A. Rodriguez, and Kathryn Kietzman. "Immigrants' Enforcement Experiences and Concern about Accessing Public Benefits or Services." *Journal of Immigrant and Minority Health* 25, no. 5 (2023): 1077–84. https://doi.org/10.1007/s10903-023-01460-x.

[102] Pillai et al. op cit.

[103] *Center for Taxpayer Rights v. Internal Revenue Service,* 1:25-cv-00457 (D.D.C.). https://www.courtlistener.com/docket/69646607/center-for-taxpayer-rights-v-internal-revenue-service/.

[104] Social Security Administration, Privacy Act of 1974, System of Records, 90 FR 50879, November 11, 2025. https://www.federalregister.gov/documents/2025/11/12/2025-19849/privacy-act-of-1974-system-of-records

[105] *State of California v. United States Department of Agriculture,* 3:25-cv-06310, (N.D. Cal.). https://www.courtlistener.com/docket/70945300/state-of-california-v-united-states-department-of-agriculture/.

[106] *State of California v. U.S. Department of Health and Human Services* 3:25-cv-05536 (N.D. Cal.). https://clearinghouse.net/case/46754/.

made.[107] Another factor amplifying the chilling effect is HUD's eagerness to share information about the residents in its housing assistance programs for immigration enforcement purposes,[108] even though it is unlawful to share such information for purposes other than eligibility determinations and even if some of the information is subject to heightened privacy protections.[109] Other policy changes—such as the attacks on birthright citizenship, arrests at green card interviews, the premature termination of Temporary Protected Status (TPS) for most designated groups, and the plan to review all refugee statuses granted under the previous Administration—combine to undermine immigrants' trust in government and their faith that promises will be kept.

In addition, the uncertainty about which benefits will count in a public charge determination, the degree of usage that will count, and whether benefits received by other family members will count will also foreseeably heighten chilling effects.

**B. The harm of the chilling effect will be substantial – and higher than DHS acknowledges**

**1. The Department's estimates of households receiving federal rental assistance fail to provide an accurate picture of the proposed rule's impact.**

With respect to federal rental assistance, the proposed rule's economic impact analysis is faulty. In Table VI.8, the proposed rule estimates that over 340,0000 households receiving federal rental assistance include at least one "alien."[110] The table defines "federal rental assistance" as including HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA 521. It is unclear, however, how DHS's calculations resulted in 340,000 households. It appears that DHS simply compared the number of foreign-born noncitizens to the total population of the United States and applied the resulting percentage -- 6.61% -- to the total number (5,189,000) of households receiving federal rental assistance.[111] These calculations raise several issues, as demonstrated by an analysis of HUD administrative data by the Center on Budget Policy and Priorities (CBPP). First, according to CBPP's research, there are approximately 340,000 *individuals* -- not households -- who are qualified noncitizens receiving HUD housing assistance in programs covered by Section 214 of the Housing and Community Development Act of 1980. This suggest that DHS's analysis overestimates the number of impacted households. Furthermore, it is unclear whether this total actually includes households receiving Section 521 rental assistance from USDA

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[107] Chye-Ching Huang, Brandon DeBot, Michael Kaercher, et al. *Treasury-DHS Tax Data Sharing Agreement Raises Grave Legal and Practical Concerns,* The Tax Law Center, NYU Law*,* April 10, 2025. https://taxlawcenter.org/blog/treasury-dhs-tax-data-sharing-agreement-raises-grave-legal-and-practical-concerns.

[108] Memorandum of Understanding Between United States Department of Homeland Security and United States Department of Housing and Urban Development (Mar. 24, 2025), https://www.hud.gov/sites/default/files/PA/documents/DHS-HUD-MOU-032425.pdf.

[109] See Leslye E. Orloff, National Immigrant Women's Advocacy Project, VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections, https://www.lsc.gov/sites/default/files/LSC/pdfs/10.%20%20Appendix%20IX%20%20CH%203%20SA_Confidentiality_Final.pdf.

[110] 2025 Proposed Rule, 52211.

[111] 2025 Proposed Rule, 52211, tbl. VI.8 fn. 3.

because this table is the only one in the NPRM that mentions this USDA program. Tables VI.9, VI.10, VI.11, and VI.12 also include calculations based on the same data; however, none of them include or mention the USDA Section 521 rental assistance program. If these foundational numbers are incorrect, then it stands to reason that DHS's estimate of households impacted by the chilling effect of DHS's proposed public charge rule is similarly flawed. To allow stakeholders a meaningful opportunity to consider and comment on the proposed rule's chilling impact, DHS must produce more accurate calculations and specify its data sources.

**2. Much of the impact will fall on children and pregnant people.**

One in four children in the U.S. – 19 million children – have at least one immigrant (non U.S.-born) parent. The majority of these children are U.S. citizens, either in mixed-immigration status households (with noncitizen parents) or with naturalized citizen parents. Only about three percent of children in the U.S. are themselves noncitizens.[112] In an analysis of HUD housing programs covered by Section 214 of the Housing and Community Development Act of 1980, of the 20,000 "mixed status" families, 46% of family members were children age 17 and younger, and the majority of these children are U.S. citizens. The average "mixed status" family consists of two parents and two children, three of whom are U.S. citizens.[113]

Children in immigrant families are more likely to face certain hardships, and are already less likely to access help due in part to flawed policies that create barriers to immigrant families' ability to access critical public benefits.[114] For example, comparing a period during the COVID-19 pandemic to the time immediately before it, families with immigrant mothers had greater increases in household food insecurity and being behind on their rent compared to families with US-born mothers.[115] Given the restrictions on immigrants' eligibility for public benefits, much of the impact of the chilling effect will fall on U.S. citizen children in immigrant families.

**3. Benefits access, especially for children, produces documented positive outcomes.**

The chilling effect of public charge will only worsen hunger, unmet health care needs, health outcomes, poverty, homelessness, and other serious problems.

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[112] Drishti Pillai, Akash Pillai, and Samantha Artiga. *Children of Immigrants: Key Facts on Health Coverage and Care*. KFF, 2025. https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/.

[113] ERIK GARTLAND & SONYA ACOSTA, ADMINISTRATION PLAN TARGETING IMMIGRANTS WOULD TAKE AWAY RENTAL ASSISTANCE, CREATE NEW BARRIERS 4 (Dec. 12, 2025), https://www.cbpp.org/sites/default/files/12-12-25hous.pdf.

[114] Tanya Broder and Gabrielle Lessard *Overview of Immigrant Eligibility for Federal Programs,* National Immigration Law Center, 2024, https://www.nilc.org/wp-content/uploads/2024/05/overview-immeligfedprograms-2024-05-08.pdf ; Kinsey Alden Dinan, *Federal Policies Restrict Immigrant Children's Access to Key Public Benefits,* National Center for Children in Poverty, 2005. http://www.nccp.org/publications/pdf/text_638.pdf.

[115] Allison Bovell-Ammon, Stephanie Ettinger de Cuba, Félice Lê-Scherban, et al. "Changes in Economic Hardships Arising During the COVID-19 Pandemic: Differences by Nativity and Race." *Journal of Immigrant and Minority Health* 25, no. 2 (2023): 483–88. https://doi.org/10.1007/s10903-022-01410-z.

Children living in public housing have better mental health outcomes than children on a wait list[116] and housing vouchers have been found to improve children's educational outcomes, including gains in math and language arts.[117] Housing programs allow families and children to access neighborhoods with lower poverty and more accessible health options, which can positively impact children later in life and are linked with improvement in long-term earnings.[118] When families have access to housing assistance, they have more resources to cover the cost of nutritious foods, health care, and other necessities.[119] Given that housing instability is associated with worse nutritional, developmental, and overall health outcomes in children,[120] children are certain to feel the impact of the chilling effect of any rule that includes housing benefits in the public charge determination.

The proposed rule would change the lives not only of children, but of countless families across the United States. These children do not live in isolation. They will grow up and live in communities where their individual success is critical to the strength of the country's future workforce and our collective economic security. It is important to America's future to ensure that these children succeed – and at the very least, stop putting their healthy development and education at risk by destabilizing their families. Forcing parents to choose between their own immigration status—or the ability to reunite their family in the future—and their children's access to these benefits is short-sighted and will harm all of U.S. society.

The impacts of the chilling effect of the proposed rule will also extend far beyond immigrant communities. When the first Trump administration issued a proposed rule that would have required HUD housing providers to evict mixed status families in HUD-assisted housing covered by Section 214, HUD's regulatory impact analysis showed that the loss of these immigrant families would have reduced both the quantity and quality of affordable housing for *all* HUD families.[121] Under Section 214 and its implementing regulations, mixed status families receive housing assistance that is prorated to cover only eligible family members. These families pay more in rent to cover the remaining family members, and public housing authorities use these higher rental contributions to pay for more vouchers and improve the physical condition of public housing units for all families.[122] The loss of mixed status families in HUD housing therefore results in a tangible loss of affordable housing for the communities they live in, an impact that falls upon both immigrants and citizens alike. A similar result is certain to occur if the proposed

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[116] Andrew Fenelon, et al. "The Impact of Housing Assistance on the Mental Health of Children in the United States," Journal of Health and Social Behavior, September 2018. https://pubmed.ncbi.nlm.nih.gov/30066591/.

[117] Amy Ellen Schwartz, et al. "Do Housing Vouchers Improve Academic Performance? Evidence from New York City," Journal of Policy Analysis and Management," December 2019. https://onlinelibrary.wiley.com/doi/10.1002/pam.22183.

[118] Raj Chetty, et al. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," American Economic Review, April 2016. https://www.aeaweb.org/articles?id=10.1257/aer.20150572.

[119] Nabihah Maqbool, Janet Viveiros, and Mindy Ault*, The Impacts of Affordable Housing on Health: A Research Summary*, Center for Housing Policy, 2015. http://www.housingpartners.com/assets/creating_change/http___app.bronto.pdf.

[120] Diana Cutts, et al. "U.S. Housing Insecurity and the Health of Very Young Children." American Journal of Public Health, Aug 2011. https://pmc.ncbi.nlm.nih.gov/articles/PMC3134514/.

[121] HUD, Regulatory Impact Analysis: Housing and Community Development Act of 1980: Verification of Eligible Status, Proposed Rule Docket No. FR-6124-P-01 (Apr. 15, 2019).

[122] *Id.*

public charge rule is finalized and subsequently chills immigrant access to HUD housing assistance.

**4. If implemented, the proposed rule and its chilling effect will disproportionately harm additional communities that could otherwise thrive with access to housing assistance and other public benefits.**

While the proposed rule will be harmful to all immigrants and their families, the rule places already vulnerable populations at a greater disadvantage. Below we explain why the rule would be particularly detrimental for children, seniors, people with disabilities, and survivors of domestic violence.

a. Older Adults

If this rule were implemented, the chilling effect that is amplified by the ambiguity of the public charge rule's application will disproportionately harm older immigrants. The number of older adults in the United States who are immigrants is growing. This is due to aging of the immigrant population who arrived during the 1980s and 90s as well as the rise in naturalized citizens who sponsor their parents to immigrate to the U.S. Under the proposed rule, many U.S. citizens may not be able to welcome their own parents into the country, even after signing a commitment to support their parents. This rule will impact older adults living in immigrant families in the U.S. who will be afraid to access services they need. Over 1.1 million noncitizens age 62 and older live in low- or moderate-income households. The proposal would prevent immigrants from using the programs their tax dollars help support, and prevent access to essential health care, nutritious food, and secure housing. It would increase poverty, hunger, ill health, and unstable housing by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for older adults and their families' well-being and long-term success.

b. People with Disabilities

People with disabilities will also be disproportionally impacted by the inclusion of other programs, including housing and food assistance, in the public charge test. Accessible, affordable housing is critical for many people with disabilities. Having a disability can raise expenses and make it harder for people with disabilities and their caregivers to work, which can strain other necessary items like having enough food. Moreover, almost one in three Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy. This benefit is only available to immigrant seniors who have worked for many years in the U.S. and earned coverage under Medicare. Overall, these are widespread programs that help keep people housed, fed and receiving needed health care – programs that serve as investments in social and individual well-being and future productivity. Immigrants and their families should not be punished for using, or even applying for, a relatively small amount of support from these benefits.

c. Survivors of Domestic and Sexual Violence

While some survivors seeking certain survivor-specific forms of immigration status are exempt from the public charge ground of inadmissibility, such as protections under the Violence Against Women Act and U visas, the exception will not protect many survivors from the detrimental effects of the public charge rule. There are many survivors of domestic violence and

sexual assault, along with their family members, who seek status in other immigration categories and who will be harmed as a consequence. Survivors hold all forms of immigration status, from U.S. citizenship to permanent residency to those immigrating through family or employment sponsorship, or as foreign students, temporary workers, or diversity visa applicants.[123] Even in instances where survivors have secure immigration status and the proposed rule does not directly apply to survivors themselves, the rule may impact their family members seeking admission or permanent residence, such as those sponsored by survivors, or those living in their households. The public charge rule will, therefore, have widespread ramifications in deterring survivors from accessing the services and programs they need to escape and overcome violence. Immigrant families are already withdrawing from assistance programs that support their basic needs due to fear, even though the proposed rule has not taken effect. Not only will the proposed rule, if implemented, impose significant human suffering costs on survivors of domestic violence and sexual assault and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of unmitigated trauma.

Housing assistance is a vital resource for survivors, giving them the security they need to leave abuse without having to fear that doing so will result in homelessness, as well as providing a safe environment to begin their recovery. One of the greatest needs identified by survivors is affordable housing. In a single day, domestic violence programs across the United States received but were unable to meet nearly 14,095 requests for housing services.[124] The inability to find and maintain affordable housing puts survivors at extreme risk of homelessness. Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness,[125] and victim service providers, advocates, and allies across the United States report that survivors became homeless as a result of sexual violence.[126] Sexual assault survivors may be forced to leave their housing or employment as a result of the violence, and become even more at risk for sexual violence as a result.[127] Without housing, sexual assault survivors report that other services to address the violence were not likely to be

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[123] Marry Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 Geo. J. on Poverty L. & Pol'y 1 (2000); Edna Erez et al., *Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 Feminist Criminology 32 (2009).

[124] Nat'l Network to End Domestic Violence, Domestic Violence Counts: 19th Annual Census Report: National Summary (2025), http://nnedv.org/wp-content/uploads/2025/05/19th%20Annual%20DV%20Counts%20Report%20-%20National%20Summary%20-%20FINAL%20EN.pdf.

[125] Wilder Research Ctr., Homelessness in Minnesota 2003 22 (2004); Ctr. for Impact Research, Pathways to and from Homelessness: Women and Children in Chicago Shelters 3 (2004); Nat'l Ctr. on Family Homelessness & Health Care for the Homeless Clinicians' Network, Social Supports for Homeless Mothers, 14, 26 (2003); Inst. For Children & Poverty, The Hidden Migration: Why New York City Shelters Are Overflowing with Families (2004); Homes for the Homeless & Inst. For Children & Poverty, Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America 3 (1998).

[126] Nat'l Sexual Violence Res. Ctr., Housing and Sexual Violence: Overview of national survey (Jan. 2010), http://www.nsvrc.org/sites/default/files/NSVRC_Publications_Reports_Housing-and-sexual-violence-overview-of-national-survey.pdf.

[127] *See, e.g.,* Rebecca M. Loya, *Rape as an Economic Crime: The Impact of Sexual Violence on Survivor's Employment and Economic Well-being*, 30 J. Interpersonal Violence 2793 (2014).

helpful.[128] For many survivors, the decision to leave abuse hinges on the question, "But where would I go?" Housing assistance provides the answer that survivors need and creates a pathway to safety—the proposed rule places additional barriers to this path, and will directly harm immigrant survivors of domestic violence.

**C. Chilling effects are predictable and DHS is obligated to minimize them.**

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.[129] The proposed rule fails to meet these requirements.

The Department is well aware of the chilling effect of the public charge rules. As explained in the preamble to the 2022 final rule:

> "The 2019 Final Rule was associated with widespread indirect effects, primarily with respect to those who were not subject to the 2019 Final Rule in the first place, such as U.S.-citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status."[130]

Indeed, these chilling effects are recognized in the current proposed rule, in the discussion of likely costs of the rule. Specifically, DHS acknowledges that "elimination of certain definitions may lead to public confusion or misunderstanding of the proposed rule, which could result in decreased participation in public benefit programs by individuals who are not subject to the public charge ground of inadmissibility."[131]

The proposed rule specifically recognizes harms that could "include:

- Worse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment.
- Higher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated.
- Increased rates of uncompensated care, where treatments or services are not paid for by insurers or patients.

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[128] *See, e.g.,* T.K. Logan et al., *Barriers to Services for Rural and Urban Survivors of Rape*, 20 J. Interpersonal Violence 591 (2005).

[129] *Improving Regulation and Regulatory Review*, Executive Order 13563, January 21, 2011. https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review.

[130] 2022 Final Rule: https://www.federalregister.gov/d/2022-18867/p-1414.

[131] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-453.

- Increased poverty, housing instability, reduced productivity, and lower educational attainment."[132]

As well as additional harms including:

- "Lower revenues for healthcare providers participating in Medicaid.
- Reduced income for companies manufacturing medical supplies or pharmaceuticals.
- Decreased sales for grocery retailers participating in SNAP.
- Economic impacts on agricultural producers supplying SNAP-eligible foods.
- Financial strain on landlords participating in federally funded housing programs."[133]

At the same time, DHS maintains that this is not the "intent" of the regulation and therefore suggests that it has no obligation to minimize these harms. Similarly, in the 2019 final rule, DHS acknowledged the likely chilling effect of the policy on groups not subject to a public charge determination, but stated that disenrolling or forgoing enrollment would be "unwarranted" and therefore "DHS will not alter this rule to account for such unwarranted choices."[134]

Given the great uncertainty created by the proposed rule about which benefits are safe to use, and whether family members' use of benefits can be held against an applicant for status, families are likely to take a cautious view and avoid using benefits that could possibly count against them. Such a choice cannot reasonably be described as "irrational," "unpredictable" or "unwarranted." Therefore, the Department must take the likelihood of such choices into account.

Even if deterring immigrants and their families from benefits is not the intent, the Department is required to show that it cannot achieve the goal of implementing its statutory requirements in an alternative way that causes less harm. The proposed rule makes no attempt to do so.

**D. DHS underestimates the Proposed Rule's costs on housing providers.**

The proposed rule acknowledges that the Proposed Rule will cause "financial strain on landlords participating in federally funded housing programs," but fails to do a deeper analysis beyond this cursory statement.

If finalized, the proposed rule will significantly burden housing providers, landlords, and state and local benefits agencies. Public housing agencies and other affordable housing providers have already begun to receive questions from tenants fearful about the implications of the public charge rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies. They will also have to update forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance. This is an administrative cost that has been placed on owners and property managers that is completely unaccounted for in the rule.

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[132] 2025 NPRM https://www.federalregister.gov/d/2025-20278/p-523.
[133] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-529.
[134] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-535.

Furthermore, the rule would generate a tremendous workload for housing providers that will need to provide immigrants with documentation regarding their history of benefit receipt. This will create a huge administrative cost for affordable housing providers, many of which are not equipped financially nor have the capacity to respond to these queries.

Additionally, housing providers are anticipating that the chilling effect of this rule will cause many eligible immigrant families to forgo housing assistance, leading to tenant turnover in their assisted units. This turnover poses significant administrative costs for housing providers, and will undermine state efforts to streamline enrollment processes between public assistance programs. Again, these costs and burdens on housing providers are not addressed in the rule.

## III. Conclusion

For all the foregoing reasons, the Department should immediately withdraw its current proposal and instead dedicate its efforts to advancing policies consistent with statute and case law that strengthen—rather than undermine—the ability of immigrants to support themselves and their families.

Our comments include numerous citations to supporting research and relevant documents, including direct links for the benefit of the Department in reviewing our comments. We direct the Department to each of the studies or documents cited and made available to the agency through active hyperlinks, and we request that the full text of each of the items cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Sincerely,

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