

A MAJOR WIN

NEW REGULATION ADDS
CRITICAL PROTECTIONS FOR
IMMIGRANT FAMILIES



FOR IMMEDIATE RELEASE
September 9, 2022

Contact:
Deidre Swesnik, dswesnik@nhlp.org, 202-919-9106

Advocates Hail Biden Regulation as Major Win for Immigrant Families, Urge Congress to Ac

A [new “public charge” regulation](#) finalized yesterday by the U.S. Department of Homeland Security (DHS) adds critical protections to secure immigrant families’ access to the health and social services safety net, including housing. While the final regulation largely restores and improves upon the public charge policy in place for 20 years prior to the Trump administration, it also makes improvements sought by the National Housing Law Project and the hundreds of other organizations coordinated by the [Protecting Immigrant Families coalition](#) (PIF).

Reacting to the publication of the final public charge regulation, NHLP issued the following statement:

“A person’s home should never be used as a weapon against them,” said Kate Walz, associate director of litigation at the National Housing Law Project. “We stand with the PIF coalition in celebrating today that we are back on track with a common-sense regulation that recognizes housing as a basic human need.

“The final Biden public charge regulation is a major win for immigrant families and for our commitment to racial equity. This new rule makes clear that immigrant families can access health, nutrition, and housing assistance without fear of public charge concerns.

“The more than 600 members of the PIF coalition are emboldened in our broader fight to repeal racist provisions in immigration law that discriminate against low-income people of color. Congress must strike public charge from the law and eliminate other barriers to the health and social services safety net. We will continue to push our leaders for action.”

Additional Background

Why does this matter?

Research confirms the now-reversed Trump public charge regulations and their widespread “chilling effect” [deterred millions](#) in immigrant families from seeking health care and aid during the pandemic, undermining pandemic response and widening racial disparities in its economic and health impact. Research indicates that, long after its reversal by the Biden Administration, persistent [information gaps](#) and concerns about the Trump policy continue to drive [lower COVID-19 vaccination rates](#), [food insecurity](#), and other disparities among immigrants of color.

How does this regulation relate to the Trump public charge policy?

The public charge regulation issued by the Trump DHS took effect just weeks before COVID-19 hit the United States. When the Biden Administration [reversed the Trump policy in March 2021](#), it reverted to guidance in effect from 1999 through February 2020. The regulation issued today formally replaces that guidance. Regulations are harder to change than informal guidance, so the issuance of final public charge regulations protects against radical changes by future presidential administrations.

What process was used to issue this regulation?

In issuing the final rule, the Biden administration took the proper notice and comment steps required by the Administrative Procedures Act, which governs the process by which federal agencies make or change regulations. The process to arrive at this final public charge regulation began in [August 2021 with an advance notice of proposed rulemaking](#) that included a 60-day public comment period. It was followed in [February 2022 with a final regulatory proposal](#) also with a 60-day comment period. In addition to both comment periods, DHS invited input through a series of public listening sessions in late 2021.

What does the final regulation do?

Based on a PIF coalition analysis, selected provisions of the final regulation clarify that:

- A child’s or other family member’s use of federal safety net programs never affects the applicant’s immigration application.
- SNAP, WIC, the Child Tax Credit, Section 8, and other “non-cash” federal programs (and state- and locally-funded versions of those programs) never affect immigration applications.
- DHS will not consider use of health care programs (like Medicaid, CHIP and the marketplace) by eligible immigrants and their family members.
- DHS can consider long-term institutional care paid for by Medicaid (short term rehabilitation or community based services will not be considered), and cash assistance for income maintenance such as SSI, TANF, and state, local and tribal cash assistance. However, DHS must consider other factors such as education, income, and an affidavit of support. Therefore, the applicant’s use of long-term institutional care or cash assistance will not automatically result in a determination that the applicant is likely to become a public charge.

###

The **National Housing Law Project’s** mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation’s supply of safe and affordable homes. We are committed to an environment of inclusion and equitable opportunity for members of the Housing Justice Network, our partner organizations, clients, staff, and board. (www.nhlp.org)



1663 Mission Street, Suite 460, San Francisco, CA 94103 | 415.546.7000 | www.nhlp.org