



NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY



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## **Trump Administration's Proposed "Public Charge" Rule**

*What Housing and Homelessness Advocates Should Know*

November 8, 2018

# Public Charge and Housing Resources

- <https://www.nhlp.org/our-initiatives/public-charge-and-housing/>
  - “Technical” Fact Sheet
  - Basics FAQ
  - Talking Points
- Comment Template
  - Available by request
  - Email [acooktha@nhlp.org](mailto:acooktha@nhlp.org)

**How Would the Public Charge Rule Impact Families Seeking and Using Federal Housing Assistance?**

**nhlp** NATIONAL HOUSING LAW PROJECT  
NATIONAL LAW CENTER FOR HOMELESSNESS ASSISTANCE

On October 10, 2018, the U.S. Department of Homeland Security (DHS) published a proposed rule that seeks to change the way in which DHS determines whether an immigrant is likely to become a “public charge.” **The proposed rule would affect immigrant families that use or qualify for federal housing assistance.**

**What is a public charge?**

Currently, many noncitizens are subject to a “public charge” test as part of their immigration process. The test looks at whether an individual is likely to be **“primarily dependent on the government for subsistence, as shown by either the receipt of public cash assistance or institutionalization for long-term care at the government’s expense.”** (emphasis added). **The current test does not consider federal housing assistance.** If a person is determined to be a public charge, they can be denied admission into the U.S. or denied a green card.

**How does the proposed rule change the public charge test?**

The proposed rule would change the public charge test to examine whether an applicant **uses or receives, or is likely to use or receive, one or more public benefits, including non-cash benefits, such as certain federal housing assistance.** This means that immigrants and their families may be forced to choose between receiving critical benefits and risking their ability to enter or stay in the United States.

**What affordable housing programs are covered by the rule?**

The proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation), and Public Housing.

**Who would be directly affected by the rule?**

The rule would primarily affect noncitizens who are applying for lawful permanent resident status (green card), individuals seeking an extension of or changes to their non-immigrant status, and immigrants seeking admission into the U.S.

Some immigrants will not be subject to the public charge test. These include refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under the Violence Against Women Act, special immigrant juveniles, certain people who have been paroled into the U.S., as well as lawful permanent residents applying for U.S. citizenship.

# Today's Agenda

- (1) How does the proposed rule impact those relying or likely to rely on housing assistance programs?
- (2) What has happened so far? Where is the proposed rule now?
- (3) How does the proposed rule change existing authority?
- (4) How would these changes affect immigrant families receiving or who may be eligible for housing assistance?
- (5) What are the next steps for the rule?
- (6) What can you do?

# How does the proposed rule impact housing programs?

- The proposed rule **departs from longstanding immigration policy** by making it more likely for certain non-citizens to be deemed a “public charge” because **they either receive, or are deemed likely to receive in the future, one or more specific federal housing subsidies.**
- Being deemed a public charge means that a non-citizen can be **denied** admission into the U.S., an extension of stay in the U.S., or a green card.
- These potential immigration consequences mean that thousands of immigrants and their families will either **disenroll from or not apply for desperately needed housing assistance.**



# What has happened so far?

- Jan 2017** Leaked draft Executive Order re: public charge
- Jan 2018** Changes to the U.S. State Department's Foreign Affairs Manual (FAM) re: public charge determinations
- Feb 8, 2018** First leaked draft of proposed public charge rule by DHS
- Mar 28, 2018** Second leaked draft of proposed public charge rule by DHS
- Sept 22, 2018** Final "unofficial" draft of proposed rule published on DHS website
- Oct 10, 2018** Proposed rule officially published in Federal Register

# What is a “public charge”?



- Origins of the public charge law
- Immigration officials can deem a person inadmissible to the U.S. or deny an application for a green card (lawful permanent residence) because the person is likely to become a public charge.

# What is a “public charge”?

Currently, public charge is defined as:

A person who is primarily dependent on the government for subsistence, as shown by either:

(i) the receipt of **public cash assistance**

or

(ii) institutionalization for long-term care at the government’s expense

# Who is subject to the public charge determination?

Currently, noncitizens seeking

(1) Admission into the U.S. or

(2) Adjustment of status to LPR

Under the proposed draft, a similar test would be applied to non-immigrants seeking to extend or change their status.



# Who cannot be considered a public charge?

- The following categories of non-citizens are not subject to a public charge determination:
  - Lawful permanent residents applying for U.S. citizenship
  - Refugees and asylees
  - VAWA self-petitioners, survivors of domestic violence, trafficking, or other serious crimes
  - Special immigrant juveniles
  - Certain parolees
  - Several other categories of non-citizens

# What is considered in public charge determinations?

- “Totality of the circumstances”- Immigration officials review these factors:
  - Age
  - Health
  - Family status
  - Assets, resources, financial status
  - Education and skills
  - Affidavit of support
- **Is housing assistance considered?**
  - DHS’s current public charge determination does NOT consider non-cash benefits (other than long-term care). Housing assistance is not considered.

# Proposed changes to “public charge” definition

**Current definition** – Person who is *primarily dependent* on the government for subsistence, as shown by either (i) the receipt of *public cash assistance* or (ii) institutionalization for long-term care at the government’s expense

Under the proposed rule, a “public charge” would be any applicant who **uses or receives, or is likely to use or receive, one or more “public benefit(s)”**



# What would be a “public benefit”?

- DHS has proposed an **exclusive** list of **federal** public benefits that would be considered.
- **Housing assistance** listed in proposed rule:
  - Public Housing
  - Section 8 Housing Choice Voucher Program
  - Project-based Section 8 Rental Assistance
- Homeless assistance is not explicitly included, except for Section 8 Moderate Rehabilitation

# What other assistance would be a “public benefit”?

## **Cash Benefits that would continue to be considered:**

- SSI
- TANF
- Federal, State, local, or tribal cash benefit programs for income maintenance

## **Monetized Non-Cash Benefits considered:**

- SNAP (formerly Food Stamps)
- Section 8 Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance

## **Non-Monetized Non-Cash Benefits considered:**

- Medicaid (with limited exceptions)
- Any benefit for long-term institutionalized care at government expense
- Premium and Cost Sharing Subsidies for Medicare Part D
- Public Housing

# How would the rule affect housing assistance?

	Calculating Monetized Benefits	Calculating Non-Monetized Benefits	Calculating Combined Use of Monetized and Non-Monetized Benefits
<b>Amount or Time Used Threshold</b>	<ul style="list-style-type: none"> <li>Cumulative value of Monetized Benefits that exceeds 15% of FPG for an individual.                             <ul style="list-style-type: none"> <li>\$1,821 in 2018</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Receipt of 12 months' assistance within a 36-month period</li> <li><b>Multiple non-monetized benefits received in one month are counted as multiple months</b></li> </ul>	<ul style="list-style-type: none"> <li>Cumulative value of Monetized benefits at or <b>below</b> 15% of FPG                             <ul style="list-style-type: none"> <li><b>Essentially any amount will count</b></li> </ul> </li> <li>Receipt of 9 months' assistance</li> </ul>
<b>Period of Time Considered</b>	<ul style="list-style-type: none"> <li>Within any period of 12 consecutive months</li> </ul>	<ul style="list-style-type: none"> <li>Within a 36-month period</li> </ul>	<ul style="list-style-type: none"> <li>Monetized: within any 12 consecutive months</li> <li>Non-Monetized: within a 36-month period</li> </ul>



# What if dependents receive assistance?

- The proposed rule does **NOT** consider whether an applicant's **dependents, including children**, have sought, received or used public benefits.
- Dependents can still be harmed by the rule.

# Who would be eligible for public housing and Section 8 and subject to the public charge test?

Immigrants Eligible for Public Housing and Section 8 Programs	Subject to the Public Charge Test?
Parolees.	Yes (with some exceptions) – public charge rule applies when seeking change of status
Granted withholding of Removal.	Yes – public charge rule applies when seeking change of status.
Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a].	Yes – public charge rule applies when seeking change of status.
Immigrants lawfully admitted pursuant to section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA) (48 U.S.C. 1931 note).	Yes.



# What are “heavily weighed” factors?

- The proposed rule lists certain factors as “heavily weighed” negative or positive factors.
- DHS states that this is **NOT** an exhaustive list

# What are “heavily weighed” negative factors?

- Heavily weighed **negative factors** include:
  - Being found to have a medical condition that is likely to require extensive medical treatment or institutionalization, if the applicant is uninsured and has no prospect of either getting insurance or being able to pay.
  - Inability to demonstrate current employment, recent employment history, or no reasonable prospect of future employment
  - Receiving or being approved to receive any covered public benefit within the 36 months preceding an immigrant’s application
  - The applicant was previously found inadmissible or deportable on public charge grounds



# What are “heavily weighed” positive factors?

- ONLY heavily weighed **positive factor**:
  - Household has financial assets, resources, and support of at least 250% of the FPG based on the applicant’s household size (In 2018 - \$62,750 for a family of four)
  - The applicant is authorized to work and is currently employed with an income at least 250% of FPG based on the applicant’s household size.

# What other factors would the rule look at?

- **Age**
  - 18-61 considered “working age”
- **Health**
  - Medical conditions affecting ability to work, go to school or take care of oneself, or requiring extensive treatment, if uninsured or lack access to private health insurance
- **Assets and resources**
  - Income, cash assets, non-cash assets that can be converted into cash within 12 months (real estate holdings = net cash value minus the sum of all loans on the home)
- **Education and skills**
  - Ability to maintain full-time employment, ability to speak English, educational levels
- **Financial status**
  - Having assets, resources and support, including employment, at above 250% of the Federal Poverty Level.
  - Use or receipt of public benefits, support to any dependents, size of family, credit reports & scores, government-subsidized health insurance



# Non-Cash Assets: Homeownership

- The proposed rule states that DHS will consider an applicant's non-cash assets that can be converted into cash within 12 months
- Non-cash assets include homes—however, the rule will reduce the net value of an applicant's home by subtracting the sum of all loans and liens on the home
- This bare net equity calculation is unfair and will undervalue homes:
  - It fails to take into account the prospective value of homeownership
  - It ignores the well-documented correlation between homeownership and future financial self-sufficiency



## Public Bond

- DHS proposes to allow some people who are deemed likely to become a public charge to submit a bond to overcome this barrier. This generally would not be available for people who have used a benefit within the past 36 months – or who have other “heavily negative” factors.
- Minimum bond would be set at \$10,000 – which would be breached if a person uses a listed public benefit.

# Proposed rule not retroactive

- The rule would be **prospective-looking** and would NOT apply retroactively.
- The rule would not consider any newly listed benefits used prior to the effective date (60 days after a final rule has been published).
- Although the benefits test includes a 36-month look-back period, this time period will not begin to toll until 60 days after the final rule has been published.

# Hypothetical #1

- Facts:
  - Mr. Smith, along with his two school-aged children, was paroled into the U.S. under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)).
  - All Smith family members are eligible to receive federal housing assistance under current immigration restrictions. For the last year and a half, the Smith family has been receiving \$1,200 per month under the Section 8 Housing Choice Voucher program.
  - Mr. Smith recently married a U.S. Citizen and is applying to change his status to that of a Lawful Permanent Resident through a family-based visa petition.
- Questions:
  - Is Mr. Smith exempted from the public charge rule?
  - How much of the housing benefit is attributable to Mr. Smith?
  - Does Mr. Smith's benefits use qualify him as a public charge?



# Hypothetical #1

- Answer:
  - To determine the amount attributable to Mr. Smith, USCIS would divide the total voucher subsidy by the number of eligible household members:
    - $\$1,200 \text{ a month} / 3 \text{ eligible household members} = \$400 \text{ a month attributable to Mr. Smith.}$
    - The remaining \$800 per month of the voucher subsidy would not be held against Mr. Smith in his public charge determination.
  - After determining the amount of the benefit attributable to Mr. Smith, USCIS will look to see if Mr. Smith has received monetizable benefits over a period of 12 months that exceed 15% of the FPG (currently \$1,821):
    - Mr. Smith receives \$400 a month from a monetizable benefit (Section 8 voucher), over a period of 12 months.
  - $\$400 \text{ a month} \times 12 \text{ consecutive months} = \$4,800$ , which exceeds \$1,821 (15% of FPG for household of one in 2018)

## Hypothetical #2

- **Facts:**

- Mr. Hitchens lives with his infant son, Bertrand.
- Mr. Hitchens moved to the U.S. on a student visa with his wife who shortly thereafter gave birth to Bertrand. Unfortunately, Mrs. Hitchens died as a result of complications arising from Bertrand's birth.
- Because Bertrand is a U.S. citizen, his family can move into public housing, which they live in for 9 months while Mr. Hitchens finished his studies. The child also receives \$100 a month from SNAP.
- Mr. Hitchens finished his graduate program and applies to adjust to a Lawful Permanent Resident through a family-based petition.

- **Questions:**

- Is Mr. Hitchens exempt from the public charge rule?
- How much of the housing benefit is attributable to Mr. Hitchens?
- Does Mr. Hitchens family's benefits use make him a public charge?

# How would this rule impact immigrant families?

- The rule would force immigrants to choose between receiving critical services and getting immigration status.
- The rule would harm immigrants and their dependents, including U.S. citizens, who live together and force more mixed-status families into homelessness.
- The rule would deter eligible families from receiving or seeking housing assistance.
- Chilling access to critical services would undermine the goal of self-sufficiency. People are more likely to give up any support if any counts in public charge test.
- The rule would exacerbate child poverty and homelessness.

# Public opposition against the rule

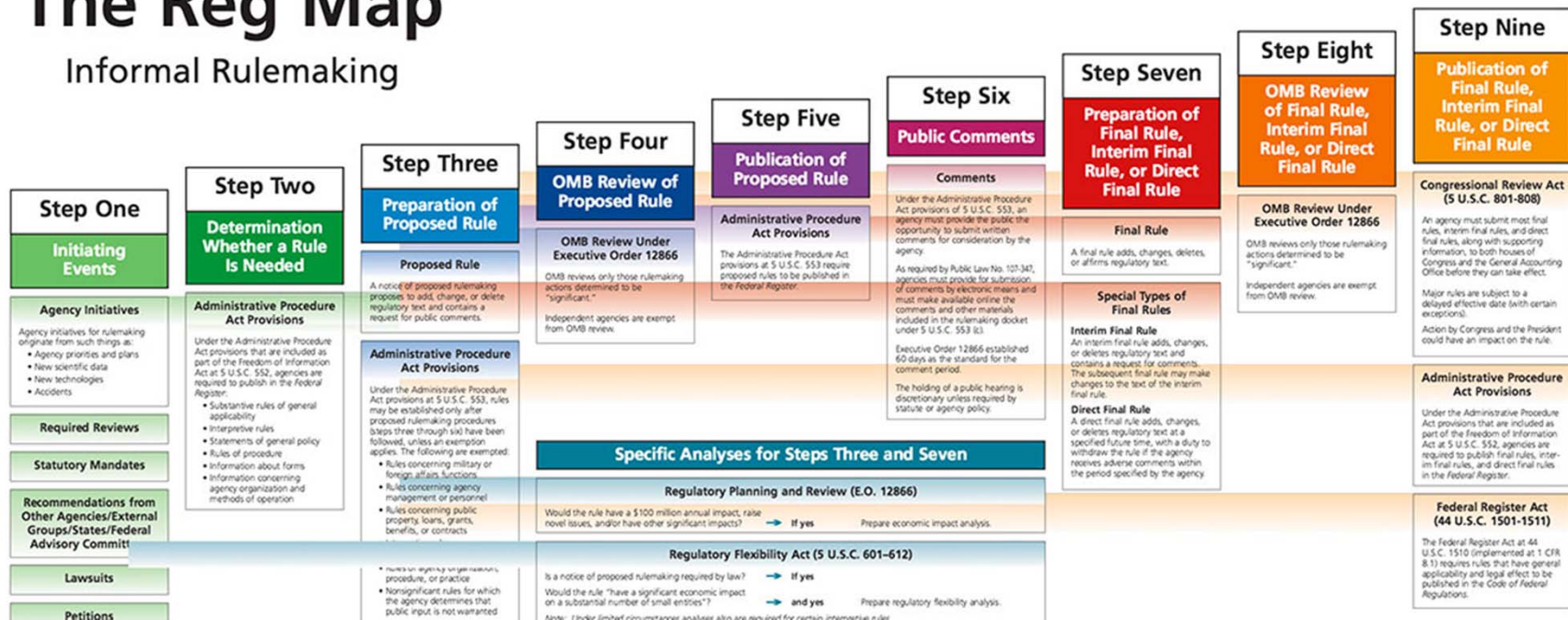
- Federal, state and local officials
- Faith-based groups
- Public health groups
- National, state, and local advocacy groups

# What will happen next? Rulemaking procedure

## Rulemaking Process: OMB Review → NPRM → Notice & Comment → Final Rule

### The Reg Map

Informal Rulemaking



# Notice & Comment Period

- When: Comments are due **December 10, 2018**.
- Who: Advocates, organizations, and impacted individuals
- How: [www.regulations.gov](http://www.regulations.gov) or use PIF's microsite at [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)
- Help getting started: Template for housing advocates and providers
  - Access by request – send email to [acooktha@nhlp.org](mailto:acooktha@nhlp.org)



# Protecting Immigrant Families Comment Strategy

- Unified front with hundreds of organizations
- Campaign Goal – 100K comments submitted
- General Comment Tips
  - Do not make suggestions that will make the rule “better”
  - If using template ensure that at least 30% of the comment is original content
  - Hold back comments until after Thanksgiving
  - Comments can be submitted anonymously by a third party



# What to discuss in comments?

- Details: How would your clients or tenants be harmed?
- Stories: Illustrate the impact on immigrant families?
- Policy: Why the rule is un-American and bad policy for this country?



# What should I say to the public or officials?

**nhlhp** NATIONAL HOUSING LAW PROJECT NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

## Public Charge and Housing Talking Points

Effective messaging often follows a VPSA model:  
*Value, Problem, Solution, Action*

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**01. LEAD WITH A SHARED VALUE:**

- We all share the concern that millions of U.S. households struggle to find affordable housing in the ongoing nationwide housing crisis.

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**02. DESCRIBE THE PROBLEM:**

- Blaming struggling families will not fix this problem. 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 Department of Homeland Security recently proposed a rule that would force non-citizens to choose between accessing benefits and maintaining their immigration status. Even though the number of programs punished by this rule decreased from earlier drafts, it will still directly impact thousands of immigrant families' access to housing and other subsistence benefits and it will have a chilling effect that puts millions of immigrants at risk of homelessness.
- The National Housing Law Project and National Law Center on Homelessness & Poverty stand united with our partners against the public charge rule—even if the direct housing impact of the rule was reduced to zero—because the public charge rule will force immigrants and their families to forego critical assistance. This means family budgets will be tightened, directly impacting the amount of money a family has for housing.
- This rule is not about keeping out bad actors or even undocumented immigrants. This is about families who have come legally, pay taxes, and are contributing to our communities who simply need additional help.
- Human needs do not change based on immigration status. It is simply impractical, dangerous, and un-American to only allow citizens to access critical, lifesaving benefits, such as housing assistance.
- Millions of families in the U.S. have at least one household member who is not a U.S. citizen. Therefore, U.S. citizens who live with non-citizen family members or friends will have to choose between either accessing life-saving benefits or protecting loved ones' chances at future citizenship.

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**03. FRAME THE SOLUTION:**

- Ensuring access to adequate housing and other basic subsistence benefits is not a drain on our coffers, but an investment in ensuring all people have an opportunity to contribute to our society that returns dividends to everyone.

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**04. SHARE THE ACTION:**

- "As you may know, the U.S. Conference of Mayors passed a resolution condemning the expansion of the public charge rule, and recently, your own Mayor(s) \_\_\_\_\_ signed a letter calling for the rescission of the rule."
- We need elected officials of all levels, organizations, and individuals to publicly call on the Administration to rescind the proposed public charge rule and to submit comments to the Federal Register detailing the harm it would do to our communities.

## Use a Value, Problem, Solution, Action Approach

- **VALUE:** We can all agree...
- **PROBLEM:** But today we have a problem...
- **SOLUTION:** The good news is...
- **ACTION:** That's why we need you and as many people as possible to...



# What should I say to my clients and others?

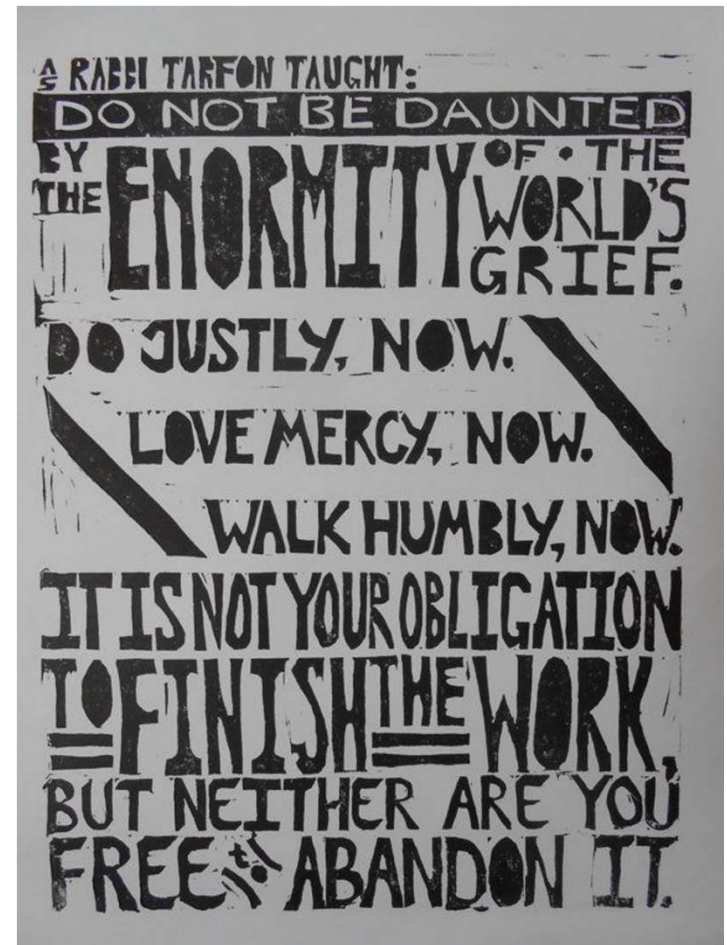
- **STOP THE CHILL!**

- Some immigrants are NOT subject to public charge
- Many programs are excluded.
- This is only a proposal.
- Negative and positive factors are both considered.
- Each situation is different.
- Fight back and comment!



# Key Takeaways

- This is part of the larger Administration attack on immigrants and their families.
- This rule will harm individuals and communities.
- **Comment!**
- **Educate!**



- Protecting Immigrant Families website – [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)
- NHLP & NLCHP’s public charge and housing resources
  - <https://www.nhlp.org/our-initiatives/public-charge-and-housing/>
    - [Simple Q&As](#)
    - [“Technical” fact sheet](#)
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