



Public Housing Authorities Directors Association

511 Capitol Court, NE, Washington, DC 20002-4937
phone: 202-546-5445 fax: 202-546-2280 www.phada.org

December 7, 2018

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

Re: DHS Docket No. USCIS-2010-0012
Inadmissibility on Public Charge Grounds

Ms. Deshommes:

The Public Housing Authorities Directors Association (PHADA) is a membership organization open to chief executive officers of local housing authorities. PHADA represents approximately 1,900 agency chief executives and executive directors representing communities of all types. The association submits the following comments to DHS in response to the Notice of proposed rulemaking concerning Inadmissibility on Public Charge Grounds for your consideration.

Upon review of the proposed rule and consultation with members, PHADA writes to register its view that the housing programs included in DHS' categories of monetizable and non-monetizable benefits should be excluded from consideration of an individual's status as a public charge. Given the stated purposes of the proposed rule, the inclusion of these programs cannot serve the interests of DHS, local housing authorities, program participants, local communities, or the American public. Their inclusion would be a dramatic departure from current practice and would harm communities, families, and housing authorities while failing to contribute in any meaningful way to DHS' goals. The major points of PHADA's position are bulleted below and explained in detail throughout this letter:

- This proposed rule would largely be ineffective and is unnecessary as almost all noncitizens are statutorily ineligible for the housing assistance programs proposed to be included in the list of public benefits.
- Receipt of a housing subsidy does not on its own accurately measure self-sufficiency. Thirty-four percent of assisted households are working and contributing to their housing costs.
- Housing programs do not constitute an incentive for immigration. The average number of months a household spends on an agency waiting list before being admitted to the public housing or housing choice voucher program is 18 and 32, respectively.
- For a variety of reasons, the proposed rule could increase costs for housing authorities and the federal government, while decreasing the number of families served.

The comments begin with a discussion of why inclusion of the housing programs does not contribute to the achievement of the purpose of the proposed rule, and then continues to review certain applicable sections of the proposed rule which are identified in the section headings of the letter. As only individuals present in the country can participate in the identified housing programs, PHADA's comments exclusively concern those individuals who the rule may apply to as applicants for extensions of stay or change of status.

Section III: Purpose of the Proposed Rule

Self-Sufficiency

According to the rule, DHS seeks to exercise its regulatory discretion in ensuring that "applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient." The proposed use of thresholds, which are discussed later in these comments, is a clear indication that DHS accepts that "self-sufficient" is a subjective condition. Therefore, it is important to acknowledge two points: receipt of a housing subsidy does not on its own accurately measure self-sufficiency, and the same programs DHS seeks to penalize noncitizens for participating in provide the support and incentives needed to successfully increase the self-sufficiency of participants.

Advocates, policymakers, and the general public all understand that many communities across the country are in an affordable housing crisis. In one recent poll,¹ 57% of respondents said housing affordability is a serious problem where they live. Recent data shows that even for middle class families (earning \$45,000 to \$74,999 annually) housing affordability is a problem. There are 20 metropolitan areas across the country where at least 30 percent of families are cost-burdened in housing, spending more than 30 percent of household income on housing.² The areas of the country where housing is least affordable and available are metropolitan areas particularly on the nation's coasts where immigrant populations are concentrated.³

A 2017 Harvard University report illustrates the overall challenge: "renters in Colorado, Florida, and New York have relatively moderate median incomes but face high housing costs. In contrast, renters in California and Hawaii have high incomes but even higher housing costs."⁴ The same report later explains that over the years 2001-2016, the income groups with the largest increases in shares of housing cost-burdened households are renters earning \$30,000-45,000 (50% of this

¹ MacArthur Foundation. *2016 How Housing Matters Survey*, https://www.housingfinance.com/policy-legislation/macarthur-survey-americans-believe-housing-affordability-a-problem_o

² Stebbins, Samuel. "Priced out of the housing market? Cities where the middle class can no longer afford a home." *USA Today*, August 15, 2018, <https://www.usatoday.com/story/money/personalfinance/real-estate/2018/08/15/cities-where-middle-class-can-no-longer-afford-home-prices/37105219/>

³ Migration Policy Institute. *U.S. Immigration Population by Metropolitan Area*, <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-metropolitan-area>

⁴ Joint Center for Housing Studies of Harvard University. *America's Rental Housing 2017*, http://www.jchs.harvard.edu/sites/default/files/05_harvard_jchs_americas_rental_housing_2017.pdf

group is cost-burdened, an increase of 1.3 million households) and renters earning \$45,000-75,000, in which the share of households with cost burdens doubled from 12 percent to 23 percent, an increase of 1.1 million households. Given this reality of the housing market, to simply equate participation in housing programs to government dependence without considering local conditions is illogical.

An additional challenge for lower-income households is that while supply of affordable rental housing is inadequate, it is often occupied by households with moderate or high incomes. Nationally, less than 60 percent of the units affordable for very low-income renters are available and adequate for those households.⁵ To combat the dearth of affordable housing, the federal government, through HUD and USDA administer housing assistance programs, which, according to the Urban Institute, subsidize 53 percent of units affordable to low-income households.⁶ If more than half of affordable rental housing available to low-income households is provided through federal assistance programs, aliens looking for affordable housing are likely to receive those government benefits. They should not be penalized because of the lack of available privately-supported affordable housing.

PHADA agrees with HUD Secretary Ben Carson that housing assistance program should provide the support families need to increase self-sufficiency, and we advocate strongly for programs such as Family Self-Sufficiency.⁷ Affordable housing is an incredibly stabilizing factor for families, as the more income that a family spends on housing, the less it has for other needs such as food, transportation, medical care, education, and savings. HUD is proud that many families are able to use the support housing authorities provide to transition off of the programs⁸ and is redoubling efforts to make those supports even more effective. For DHS to make noncitizens participating in the selected programs subject to the public charge determination would be to harm these families and their communities for no tangible benefit. Individuals applying for either an extension of stay or change of status will continue to reside in their respective communities, but some may choose to disenroll from the very programs that are helping them to decrease the total amount of any public assistance they receive. Later in these comments is a full discussion of the adverse impacts of disenrollment, but DHS should strongly consider the benefits that individuals and communities receive through the work housing authorities do, and not subject applicants to adverse treatment due to their participation.

In the discussion in the proposed rule defining “public benefits,” DHS explains that the definition of the term in the Personal Responsibility and Work Opportunity Act (PRWORA) “does not work in the public charge inadmissibility determination [because] it includes grants, contracts, and licensures that are transaction in nature and may involve the exchange of governmental resources for value provided by the alien.” PHADA would like DHS to recognize that while 53 percent of assisted households are disabled or elderly, 34 percent of assisted households are employed⁹ and

⁵ Ibid.

⁶ Ibid.

⁷ U.S. Department of Housing and Urban Development. “Family Self-Sufficiency Program.” https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss

⁸ U.S. Department of Housing and Urban Development. “Humans of HUD.” <https://www.hud.gov/HumansofHUD>

⁹ U.S. Department of Housing and Urban Development. “Resident Characteristics Report.” <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>

therefore contributing as taxpaying members of the community. There is also no reason to assume that the individuals potentially subject to the proposed rule are not contributing to their local communities through payment of taxes, volunteerism, and other means at levels similar to U.S. citizens receiving the same assistance.

Section V.B: Definition of Public Charge and Related Terms

DHS' rationale for "[adding] several definitions that apply to public charge inadmissibility determinations" outlines several reasons to exclude the identified housing programs from the list of public benefits.¹⁰

In examining the legislative history of the term "public charge," DHS includes in its narrative what is in fact (along with self-sufficiency) one of two statements that comprise Congress' summary of the foundation of the nation's immigration policy, as stated in PRWORA: "the availability of public benefits should not constitute an incentive for immigration to the United States." While DHS has an in-depth discussion on self-sufficiency throughout the proposed rule, not much is written concerning public benefits incentivizing immigration. DHS may argue that PRWORA's restrictions on eligibility solved the incentive issue, but as it is part of the legislative context from which the proposed rule springs, it is important to examine the issue.

Noncitizen eligibility for federal housing assistance notwithstanding, these programs do not constitute the incentive they may have at the passage of PRWORA more than two decades ago. As discussed above, housing affordability being the major crisis that it is, federal housing assistance programs help far less households than qualify for assistance. A 2018 Urban Institute report established that in 2016, only 20 percent of the more than 25 million eligible households received assistance."¹¹ What this means in the context of the public charge is that households eligible for housing assistance are not at all likely to receive assistance; noncitizen households are no different.

For the public housing and housing choice voucher programs, the average number of months a household spends on an agency waiting list before being admitted to the program is 18 and 32, respectively. Combined with the statutory eligibility restrictions for noncitizens, the idea that waiting up to two and a half years for housing assistance could be an incentive is not a serious one. As the incentive factor was a crucial part of Congress' basis for all but forbidding noncitizens from receiving federal housing assistance, DHS has a clear basis from removing housing programs from the list of public benefits.

Lastly, Congress did allow limited classes of noncitizens to remain eligible for federal housing assistance. For DHS to deem such participation disadvantageous for applicants in their

¹⁰ Indeed, this section of the proposed rule outlines why DHS' one-size-fits-all effort is headed in the wrong direction. DHS, summarizing why a Senate Judiciary subcommittee recommended that a definition of "public charge" not be adopted included this summary of commentary from the Committee Report: "the elements that could constitute any given individual's likelihood of becoming a public charge vary."

¹¹ Kingsley, Thomas, *Trends in Housing Problems and Federal Housing Assistance* (The Urban Institute, 2017) cited in The Urban Institute, *The Case for More, Not Less*, https://www.urban.org/sites/default/files/publication/95616/case_for_more_not_less_1.pdf

immigration matters is paradoxical. At 8 USC 1601 § 400 Congress provided that (emphasis added):

(3) Despite the principle of self-sufficiency, **aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.**

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) **It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant** in accordance with national immigration policy.

Congress has explicitly restricted eligibility for housing assistance programs to meet the goal of “assuring that individual aliens not burden the public benefits system.” PHADA urges DHS to consider the complete legislative context which can only result in one logical understanding: housing programs do not belong on the list of public benefits.

Section V.B.2(b): Consideration of Monetizable and Non-Monetizable Benefits

DHS’ approach to applying benefits thresholds further indicates why housing programs should not be included in the list of public benefits. It is true that while the demographics of the program may vary due to the nature of the programs (for instance, the public housing program can only accommodate households of certain sizes as individual unit configurations are fixed, while the HCV program can accommodate families with no respect to household size), the populations of individuals eligible will generally overlap completely. DHS has found it necessary to treat an applicant differently depending on which type of assistance he or she receives, demonstrating a lack of understanding of the operations of the programs.

DHS must understand that utilizing different thresholds could have drastic and critically different outcomes depending on which program provides assistance. For example, an applicant in the public housing program could receive¹² the same dollar amount of assistance as someone in the HCV program, but if the public housing individual does not meet the 12 month threshold, he or she would not be subject to the same outcome as if he or she participated in the HCV program, all other things being equal. DHS’ complete rationale for including housing assistance programs in its list of public benefits collapses under this single distinction if it is included in the final rule.

Section V.B.2(c)v: Housing Programs

DHS makes a valuable argument in favor of excluding housing programs from the public benefit list: “these programs to not involve the same level of expenditure as the other programs ... and noncitizen participation in these programs is currently relatively low.” It is irrational to include

¹² In none of the identified housing programs does the participant receive the subsidy directly (this detail further distinguishes these programs from TANF and SNAP). The housing provider is the entity receiving the subsidy. However, this colloquial terminology is accepted and used by individuals familiar with the industry.

this handful of programs because the “total Federal expenditure for the programs overall remains significant.” In the section below on transfer payments, the notion of protecting the Federal budget is discussed, so there is no need to do so here. In many if not all cases throughout the proposed rule and the legislative and administrative texts, the focus of the public charge concept is centered on the individual. DHS’ motivation to include housing programs is inconsistent with its own approach to the rule and the plainly stated intentions of Congress.

Section V.L.1(c): Receipt of Public Benefits Within Last 36 Months of Filing Application

The proposed rule states that “for extension of stay and change of status applicants, the determination regarding the receipt of such benefits above the proposed threshold” includes a retrospective review of whether the alien received benefits in excess of the thresholds. There are two problems with this approach. The first problem again concerns the supportive programs that participants of certain housing programs can participate in that help increase self-sufficiency. As this concept has already been discussed, no additional detail needs to be added except to reinforce the imprudence of instituting a rule that will penalize individuals that were able to increase their earnings to a point where assistance is no longer needed.

Secondly, DHS’ basis for its look back policy is grounded in its understanding of the repeated use of welfare benefit programs. Putting any issues with DHS’ understanding of the results of the cited studies aside, it remains true that the available research does not examine housing assistance programs. Given the information PHADA has provided regarding the waiting lists for housing programs (and therefore the virtual elimination of cycling in these programs), DHS cannot substantiate its rationale for retroactive consideration of the receipt of housing assistance benefits.

Section VI.A.4(c): Transfer of Payments and Indirect Impacts of Proposed Regulatory Changes

In justifying the departure from the “primary dependence” approach, the rule states “DHS considers the current policy’s focus on cash benefits to be insufficiently protective of the public budget.” The detailed discussion on expected reduced transfer payments highlights yet another significant difference between housing programs and the other identified public benefits. While for entitlement programs, individuals choosing to disenroll or forgo enrollment “would result in a reduction of transfer payments from the federal government to such individuals,” the same is not true of the housing assistance programs.

Earlier in these comments, PHADA provided data on the average time participants spend on wait lists before being admitted to the identified housing programs. That same data, in addition to the data on the gap between households served and eligible for assistance programs is relevant concerning reduced transfers. In short, the relatively low number of participating households affected by the proposed rule notwithstanding, disenrollment or forgone enrollment will provide no financial benefit to the government through reduced transfers. In fact, for a variety of reasons, the proposed rule could increase costs for housing authorities and the federal government, while decreasing the number of families served. DHS has done the public a disservice by failing to quantify the costs that housing providers would incur under this rule.

Currently, families that contain individuals both eligible and ineligible for federal housing assistance based on immigration status have their subsidy prorated according to the number of

household members eligible to participate¹³. For example, take a household of four people that includes one person ineligible for assistance. For the purpose of this example, the monthly non-prorated subsidy (housing assistance payment, or HAP) for that family is calculated at \$400. However, as only three of the four household members are eligible, the family will receive three-fourths of the subsidy; the housing authority will provide \$300 and the family must cover the remaining \$100 out of pocket. If the proposed rule goes into effect, the family may determine their best option is for the individual subject to the rule to leave the household. In that case, the subsidy would increase by at least the \$100 prorated portion of the subsidy, and possibly more if the individual leaving the household had income that was used to calculate the HAP.¹⁴

DHS should also consider that due to the significance of housing stability, some families may attempt to defraud the housing authority by reporting that an individual has left the household while in fact they continue to reside in the subsidized unit. Alternatively, a household may determine they have no better choice than disenroll from the program immediately given the time-sensitive provisions of the proposed rule. Either action could be an act of program noncompliance.

Housing program participants typically hold a lease which as a contract they cannot break without being subject to certain penalties. Households that break their lease in order to evade penalties from DHS will generate additional costs for the housing agency. In the public housing and project-based rental assistance programs, the housing authorities or owner will lose income because of the unit vacancy and turnover costs. In all of the identified programs, recruiting, processing, admitting, and housing new families is an unnecessary additional administrative cost in the scenarios relevant to this discussion. While DHS is not responsible for the fraud or noncompliance encouraged by the rule, the Department should take into consideration the cost of enforcement and program management on agencies that are already contending with years of underfunding.

Disenrollment and forgone enrollment from affordable housing programs would undoubtedly increase the share of family income going towards housing. This increased cost burdening will undermine household and community stability. Stable housing is recognized as a platform from which households can access services that cultivate gains in health, education, and economic outcomes.¹⁵ Families that spend between 30 and 35 percent of their income on housing spend the most on the enrichment of their children which in turn results in children of households in that income category having the greatest measures of cognitive development.¹⁶ Links between low housing quality and overcrowded housing, and poorer mental health have been established for

¹³ 24 CFR § 5.520

¹⁴ This same concept applies if the subsidy was not prorated (all household members had an eligible immigration status to receive assistance), but a household member left due to concerns about the rule's impact on their immigration case.

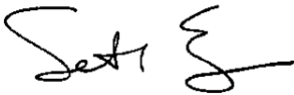
¹⁵ Urban Wire, "One in four: America's housing assistance lottery,"
<https://www.urban.org/urban-wire/one-four-americas-housing-assistance-lottery>

¹⁶ MacArthur Foundation. 2014. *Affordable Housing is Associated with Greater Spending on Child Enrichment and Stronger Cognitive Development*,
https://www.macfound.org/media/files/HHM_-_Affordable_Housing_-_Stronger_Cognitive_Development.pdf

mothers.¹⁷ It is clear, and DHS acknowledges that the proposed rule would be another barrier to families applying for the public benefits for which they are eligible. Because of these potentially devastating household and community effects, DHS must exclude housing programs from its list of public benefits.

PHADA believes that including housing programs in the list of public benefits will be harmful to individuals, communities, and housing authorities. Furthermore, as discussed, there will be no benefit to the government or American public only increased costs and fewer assisted households. In PRWORA, Congress took steps to ensure that housing programs would neither incentivize immigration nor burden the public benefit system by restricting eligibility. DHS should remove all housing programs from its list of public benefits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Seth E'.

Seth Embry
Policy Analyst

¹⁷ MacArthur Foundation. *The Link between Housing, Neighborhood, and Mental Health*, [https://www.macfound.org/media/files/HHM_Brief -
Housing Neighborhood Mental Health cnb5GRx.pdf](https://www.macfound.org/media/files/HHM_Brief_-_Housing_Neighborhood_Mental_Health_cnb5GRx.pdf)