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

Re: DHS Docket No. USCIS-2025-0304, Public Charge Ground of Inadmissibility; Notice of Proposed Rulemaking

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh”) hereby submit comments regarding the U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”) Notice of Proposed Rulemaking entitled “Public Charge Ground of Inadmissibility”, DHS Docket No. USCIS-2025-0304 (the “2025 Proposed Rule”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of eighty-five large public housing authorities (“PHAs”) own and manage nearly half of the nation’s public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country and has been working with its clients on housing issues for many years. Reno & Cavanaugh was founded in 1977, and over the past three decades the firm has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Although our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

The mission of PHAs across the country is to serve low-income families in their communities by providing decent, safe, and affordable housing. Access to housing assistance provides low-income families the flexibility to cover other basic needs like healthcare, which are fundamental to achieving—and maintaining—self-sufficiency. The Department of Housing and Urban Development’s (“HUD”) Section 8 Housing Choice Voucher Program (“Section 8”) and Public Housing Program (“Public Housing”) are key to providing housing stability for these vulnerable populations. Therefore, we are extremely concerned that the 2025 Proposed Rule once again seeks to include the receipt of public or assisted housing as a basis for determining that an individual is likely to become a public charge, and exclude non-citizens from entering or remaining in the United States on that basis.

This is not the first time that DHS has sought to make radical changes to the public charge policies and regulations. Despite receiving 266,077 public comments, many of which objected to the October 2018 notice of proposed rulemaking, *Inadmissibility on Public Charge Grounds*,¹ DHS issued a final rule in August 2019 (the “2019 Rule”).² The 2019 Rule, which upended decades of precedent by defining “public benefits” to include Section 8 and Public Housing, was heavily litigated, enjoined by several courts,³ and ultimately vacated by judicial order⁴ and rescinded.⁵

Judicial objections to the 2019 Rule generally focused on DHS’ failure to articulate a reasonable explanation for the significant changes to the definition of public charge or the framework for evaluating whether a non-citizen is likely to become a public charge,⁶ and DHS’ disregard for the historical understanding that non-cash public benefits are excluded from public charge determinations.⁷ Several courts declared the 2019 Rule to be arbitrary and capricious.⁸ It is therefore concerning that DHS appears poised to model and adopt several key features of the 2019 Rule.

However, it is impossible to determine what the forthcoming proposed rule will actually contain because DHS intends to rescind intemperately the existing regulations before releasing new policies for public review and comment, in violation of the Administrative Procedure Act (“APA”).⁹ There is no telling how long it may take DHS to formulate new proposed regulations. Meanwhile, the public will be left to the vagaries of how individual DHS officers may choose to interpret the wide-ranging Immigration and Nationality Act of 1952 (“INA”), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), and the Illegal

¹ 83 FR 51114 (Oct. 10, 2018).

² 84 FR 41292 (Aug. 14, 2019), as amended by 84 FR 52357 (Oct. 2, 2019).

³ See *City and Cnty. of San Francisco v. USCIS*, 408 F. Supp. 3d 1057 (N.D. Cal. 2019); *Make the Road New York v. Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *Wash. v. DHS*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019); *Cook County, Ill. v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019); *Casa de Md. v. Trump*, 414 F. Supp. 3d 760 (D. Md. 2019).

⁴ See *Cook County, Ill. v. Wolf*, 498 F. Supp. 3d 999 (N.D. Ill. 2020).

⁵ 86 FR 14221 (Mar. 15, 2021).

⁶ *State of N.Y. v. DHS*, 408 F. Supp. 3d 334, 346-49 (S.D.N.Y. 2019); *San Francisco*, supra n.3, at 1101-03.

⁷ *Washington v. DHS*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019).

⁸ *Cook County, Illinois v. Wolf*, 962 F.3d 208, 230-33 (7th Cir. 2020); *State of N.Y. v. DHS*, 969 F.3d 42, 81-86 (2d Cir. 2020); *City and Cnty. of San Francisco v. USCIS*, 981 F.3d 742, 759-63 (9th Cir. 2020). See also *San Francisco*, supra n.3, at 1105-15.

⁹ 5 U.S.C. § 706.

Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). In fact, DHS’ choice to rescind the public charge regulations without promulgating new ones is inconsistent with the INA, which explicitly provides that the Secretary of Homeland Security “*shall* establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of this chapter.” 8 U.S.C. § 1103(a)(3) (emphasis added). DHS’ actions are plainly arbitrary and capricious and unconstitutionally vague.¹⁰

The Supreme Court addressed this precise issue in Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983), and concluded that it was arbitrary and capricious to rescind automobile safety standards without promulgating new regulations.¹¹ Furthermore, significant policy changes must be accompanied by heightened justification where, as here, the new policies contradict factual findings underlying the prior policy, and where serious reliance interests exist.¹² Additionally, alternatives to the rescinded regulations must also be considered by DHS.¹³ DHS has failed to articulate sufficient rationale to satisfy the good cause standard to prematurely rescind the existing regulations and has further failed to meet any of the other standards of review.

A. Discussion of DHS’ Justifications for the 2025 Proposed Rule

The 2025 Proposed Rule is arbitrary and capricious because there is no rational connection between DHS’ stated reasoning and its intended rescission of the public charge regulations. DHS states that both the 2019 and 2022 Rules were overly restrictive and prohibited immigration officers from considering anything beyond specifically-enumerated factors in making public charge inadmissibility determinations. This is untrue. The 2022 Rule in particular closely tracks the language of the INA, including the statutory “minimum factors” and affidavits of support under 8 U.S.C. § 1183a (“Affidavits of Support”), and explicitly enables officers to make “totality of the circumstances” decisions.

Furthermore, DHS misinterprets the premise in Zambrano v. I.N.S.¹⁴ that past precedent requires DHS officers to make public charge determinations “in the totality of the circumstances,” and that therefore, the regulation requiring a “totality of the circumstances” analysis is unnecessary. Specifically, DHS intends to impose a novel view that receipt of any public benefits at all would

¹⁰ Planned Parenthood of Indiana & Kentucky, Inc. v. Marion Cnty. Prosecutor, 7 F.4th 594 (7th Cir. 2021).

¹¹ “[T]he forces of change do not always or necessarily point in the direction of deregulation. In the abstract, there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation. . . . [T]he direction in which an agency chooses to move does not alter the standard of judicial review established by law.” *Id.* at 42.

¹² F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 515-16 (2009); *See also* California v. Bernhardt, 472 F. Supp. 3d 573 (N.D. Cal. 2020) (Bureau of Land Management’s near-total rescission of a prior rule was ruled arbitrary and capricious because the Bureau had articulated “conclusory, boilerplate justifications” for completely reversing its prior factual findings); and Nat’l Ass’n of Manufacturers v. United States Sec. & Exch. Comm’n, 105 F.4th 802 (5th Cir. 2024) (2021 rescission of a 2020 “proxy voting” rule was deemed arbitrary and capricious for its failure to explain the decision and failed to adequately account for the factual findings underpinning the 2020 Rule); *but compare* Chamber of Com. of United States v. Sec. & Exch. Comm’n, 115 F.4th 740 (6th Cir. 2024) (examination of the same 2021 SEC rescission found that the SEC had not acted arbitrarily and capriciously because its reevaluation of old facts in “precisely the same record” reached new policy conclusions that were reasonably explained).

¹³ Int’l Ladies’ Garment Workers’ Union v. Donovan, 722 F.2d 795 (D.C. Cir. 1983).

¹⁴ 972 F.2d 1122 (9th Cir. 1992), cert. granted, judgment vacated, 509 U.S. 918 (1993).

disqualify non-citizens on the basis of being a public charge. This directly contradicts the holding in Zambrano that receipt of public benefits alone is not a disqualifying factor.

DHS proposes in the 2025 Proposed Rule to remove a myriad of considerations bearing on whether a non-citizen is likely to become a public charge. DHS claims that the regulations either duplicate statutory requirements (the minimum consideration factors: age; health; family status; assets, resources, and financial status; and education and skills), are covered in other regulations (disability status alone is insufficient to deny admissibility, and denial determinations must be in writing), are historical practices that are memorialized in legal precedent (totality of circumstances test), or conflict with underlying statutes (consideration of Affidavits of Support, and current or past receipt of public benefits). However, DHS provides thin or non-existent justifications for these bald, unsubstantiated claims, which is arbitrary and capricious.

Finally, in parsing legislative history purportedly in support of the 2025 Proposed Rule, DHS mistakenly relies on IIRIRA. Yet, the most recent pronouncements of Congressional intent regarding immigration policy are articulated in H.R. 3194, the U.S. Citizenship Act, which was introduced in 2023 and enjoyed bi-partisan support until it was derailed by purely political rather than policy reasons. H.R. 3194 refers to Section 403 of PRWORA, which was amended as recently as 2020, for the definition of “means-tested public benefit” and not IIRIRA. PRWORA specifically provides that non-citizens may be eligible for certain public benefits after they satisfy a 5-year waiting period.¹⁵ It is arbitrary and capricious for DHS to cherry pick the statutory construct that it believes best supports its objectives, ignoring or directly violating all other Congressional mandates.

B. Discussion of Substantive Changes Advanced by DHS

We note that the proposed change from analyzing whether an individual is “likely to become primarily dependent on the government for subsistence” to deeming an individual who is not entirely self-sufficient to be a public charge is a sweeping departure from established precedent. In the 2025 Proposed Rule, DHS appears, by definition, to attack and punish the successful administration of Section 8 and Public Housing programs and penalize the individuals the programs are intended to serve. In other words, the litmus test would no longer be whether an individual is “primarily dependent” on government assistance. Rather, DHS believes it should be whether an individual participates in these housing programs at *all*. This is a misinterpretation of the applicable statutes and ignores decades of practice and precedent. Notably, in Cook County, Illinois v. Wolf, the Seventh Circuit Court of Appeals concluded that this misinterpretation of the public charge analysis is arbitrary and capricious:

The INA does not call for total self-sufficiency at every moment; it uses the words “public charge.” DHS sees “lack of complete self-sufficiency” and “public charge” as synonyms: in its view, receipt of any public benefit, particularly one related to core needs such as health care, housing, and nutrition, shows that a person is not self-sufficient. This is an absolutist sense of self-sufficiency that no person in a modern society could satisfy; everyone relies on nonmonetary governmental programs, such as food safety, police protection, and emergency services. DHS

¹⁵ 8 U.S.C. § 1613(a).

does not offer any justification for its extreme view, which has no basis in the text or history of the INA.¹⁶

The 2025 Proposed Rule seems to demand that eligible families decide between accessing essential housing assistance or maintaining their ability to enter or remain in the United States. Either choice will have detrimental results—the family foregoes access to decent, safe, affordable housing or is deemed a public charge. The practical impact of the 2025 Proposed Rule would be to penalize families for participating in the very housing programs that are meant to serve them, even after they have satisfied the five-year waiting period under PRWORA. This directly contradicts the mission of these programs and PHAs, and as such, we respectfully urge that the 2025 Proposed Rule be abandoned in its entirety.

Further, we note that even at this stage of the rulemaking process, the 2025 Proposed Rule will detrimentally impact the communities PHAs serve. Prior to and after the enactment of the 2019 Rule, our communities experienced large disenrollments from housing, food, and health care assistance, even among eligible non-citizens who by right could participate in such programs.¹⁷ As a result, our communities experienced more homelessness, more hunger, and exhibited worse health outcomes, which harmed all persons regardless of citizenship status. We have every reason to believe that the 2025 Proposed Rule will only deepen these detrimental impacts and further weaken PHA communities.

Lastly, the 2025 Proposed Rule must be read in conjunction with HUD’s November 26, 2025 Notice, entitled “PRWORA; Interpretation of ‘Federal Public Benefit’”, which was issued just one week after publication of the 2025 Proposed Rule. It is not coincidental that HUD’s notice interprets the term “federal public benefit” to include “all HUD programs related to public or assisted housing.” HUD’s pronouncement is conclusory and fails to satisfy the heightened review standards required of significant and impactful policy changes, particularly where substantial reliance interests are at stake.

Below are our further detailed comments regarding the 2025 Proposed Rule.

1. The inclusion of housing assistance in the determination of a public charge, when eligible status is an existing pre-requisite for program participation, ignores the PRWORA statutory provisions, creates confusion, and otherwise undermines the mission of those programs.

The public charge test is applied when an individual enters the United States or seeks an adjustment of status, usually to become a lawful permanent resident. Certain categories of immigrants are exempt from the public charge test, including individuals who are eligible to participate in Section 8 and Public Housing. In other words, individuals who participate in the Section 8 and Public Housing programs traditionally have not been subject to the public charge test, and participation in those programs is limited to individuals who have eligible immigration status already, in conformance with PRWORA.

¹⁶ 962 F.3d at 230-33.

¹⁷ 90 FR at 52209.

Prior to 2019, DHS never considered housing program participation to be part of the public charge test. In fact, as early as 1987, the Immigration and Nationalization Service (“INS”), the predecessor to DHS, explicitly excluded Public Housing from the public assistance considered as part of the public charge test.¹⁸ It is therefore incumbent upon DHS to explicitly clarify that, subject to certain exceptions, individuals who are currently participating in or are otherwise eligible to participate in the Section 8 or Public Housing programs are not subject to the current public charge test or the 2025 Proposed Rule.

2. *The 2025 Proposed Rule is already increasing the administrative burden on PHAs across the country, despite proposing no direct changes to the housing programs administered by PHAs.*

Beyond the confusion referenced above, the 2025 Proposed Rule has created unnecessary fear in PHA communities and caused a chilling effect in the populations we serve. It is clear that DHS has anticipated this chilling effect:

Moreover, the proposed rule would also result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include aliens as well as U.S. citizens who are members of mixed-status households....¹⁹

It is also clear that DHS anticipated that the 2025 Proposed Rule would result in cost savings, estimated at \$8.97 billion annually in “total reduction in transfer payments from the Federal and State governments ... due to the disenrollment or foregone enrollment in public benefits programs by members of households that include aliens who may be receiving public benefits.”²⁰ DHS ignores that non-citizens must first satisfy eligibility criteria to participate in housing programs, which includes an examination of citizenship and immigration status.

While DHS seems to acknowledge that the 2025 Proposed Rule will have “downstream and upstream impacts on State and local economies, large and small businesses, and individuals,”²¹ DHS seems to focus on reduced revenues. DHS provides the example of medical companies and retailers facing reduced revenues due to decreased participation. Further, in regards to the potential for increased costs, DHS focuses on “new direct and indirect costs on various entities and individuals associated with regulatory familiarization” with the 2025 Proposed Rule. DHS overlooks the very real and practical administrative burdens and associated costs related to the chilling effects of the 2025 Proposed Rule.

We doubt that DHS’s estimated cost savings accounted for the lengthy waiting lists to participate in the Section 8 and Public Housing programs. Any disenrollment or return of housing assistance under the 2025 Proposed Rule will not result in any savings to PHAs or the federal programs because the demand for such assistance far outstrips the available assistance. Further, PHAs will

¹⁸ 52 F.R. 16209 (May 1, 1987).

¹⁹ *Id.* at 52170.

²⁰ *Id.*

²¹ *Id.*

be faced with increased administrative costs given the anticipated disenrollment/new enrollment turnover. PHAs will incur significant costs processing the next family on the waiting list, as well as closing out the eligible family that is exiting the program.

It is apparent that the 2025 Proposed Rule will not result in any cost savings to PHAs, and will actually increase costs to PHAs and their communities.

3. *Access to decent, safe, affordable housing is necessary for building healthy communities and increasing family self-sufficiency.*

DHS fails to recognize that beyond “cost savings” and “reduced revenues,” the 2025 Proposed Rule has a very real human cost. Communities thrive and economies flourish when individuals and families are stable and healthy. Access to safe, affordable housing is crucial for these communities. This country is facing an affordable housing crisis and PHAs are doing their part to provide assistance. This deepening crisis imperils many households already making hard choices between paying for rent and paying for medical care and other basic needs. It should come as no surprise that the low-income communities that PHAs serve are often the same communities who are eligible to participate in the healthcare and nutrition programs the 2025 Proposed Rule likewise intends to include in the public charge test. Elimination of housing assistance coupled with lost access to healthcare and nutrition programs leaves little to no ability for these families communities to thrive.

Under the 2025 Proposed Rule, those families who most need such housing, health, and nutrition services will be forced to opt out of those programs, forgoing basic health and nutrition needs, just as they did after the 2019 Rule was promulgated. This will severely impact the health of not only those families, but the communities at large. Healthy families will not receive assistance, e.g. healthcare, and the overall health of the community will suffer. Less healthy populations amongst the most vulnerable communities will perpetuate health risks and lead to less self-sufficiency for all persons regardless of citizenship status. This will lead to categorically negative outcomes, beginning with local economies and employment, which will cause cascading and multiplying negative effects from there.

Clearly, the overall weakening of the health infrastructure in these vulnerable communities must be avoided.

4. *Significant reliance interests are at stake.*

The APA and the courts require that federal agencies provide heightened justifications for new policies whenever prior policies engendered serious reliance interests.²² The 2025 Proposed Rule gives a mere nod to consideration of reliance interests and invites comments on these matters; however, reliance interests must be evaluated and factored in *before* existing regulations are rescinded and new polices are implemented. Failure to do so is arbitrary and capricious and contrary to law.

²² Fox, supra n.12.

PHAs have significant concerns regarding the potential financial and human impacts of the 2025 Proposed Rule, which DHS has failed to fully analyze or justify. If implemented, the 2025 Proposed Rule would eliminate decades of reliance on established regulations²³ that PHAs have justifiably relied on and followed to carry out policies and directives in accordance with statutory requirements. The 2025 Proposed Rule would also impose enormous unfunded administrative costs on PHAs, ranging from devoting staff resources to learn and understand the new policies, amending and implementing revised Admission and Continued Occupancy Policies and Administrative Plans, and operating the programs under the new policies, none of which are expected to be funded by increased appropriations. Additionally, DHS's improper proposal to remove the existing regulations before implementing new regulations will create ambiguity and confusion. Inefficiencies due to staff and resident confusion would fall squarely on PHAs, and would detract from and direct resources away from their missions to provide critical housing services.

PHAs also anticipate they would be forced to absorb significantly higher unit and tenant turn-over costs, which will further stretch and stress limited budgets. Higher turnover and less reliability in the Housing Choice Voucher program will erode landlord relationships and support of the program, which already struggles to attract and retain an adequate number of landlords. This will further exacerbate the affordable housing crisis and will contribute to homelessness as a shrinking number of private landlords make fewer units available for rental. The private housing market will also struggle to absorb previously assisted households who leave PHA programs and compete for already limited naturally affordable housing resources in communities.

Finally, PHAs have justifiably relied on the higher rental income paid by eligible mixed-status families that include non-citizen members, which would disappear if the 2025 Proposed Rule is implemented. This will lead to substantial increases in program costs and housing subsidies, and will dramatically increase the cost to the Federal government to house the same number of needy families.

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact us.

Sincerely,



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²³ The effects of the 2019 Rule were muted by injunctions issued soon after implementation and the subsequent vacatur and removal of the rule.