December 10, 2018

SUBMITTED ELECTRONICALLY

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

To Whom It May Concern:

The Council of Large Public Housing Authorities ("CLPHA") and Reno & Cavanaugh, PLLC ("Reno & Cavanaugh") are pleased to submit comments on the Department of Homeland Security's ("DHS") proposed rule entitled "Inadmissibility on Public Charge Grounds," DHS Docket No. USCIS-2010-0012 (the "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 more than seventy 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 represents more than one hundred PHAs throughout the country and has been working with our clients on fair housing issues throughout the 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. Though 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 our 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 Proposed Rule seeks to include the receipt of Section 8 or Public Housing assistance as a basis for determining that an individual is likely to become a public charge.

As a preliminary matter, we note a change from an analysis that an individual is "likely to become primarily dependent on the government for subsistence" to an individual "who receives one or more public benefits." Herein, DHS appears, by definition, to attack and punish the successful administration of Section 8 and Public Housing programs to the individuals for which they are intended. In other words, the litmus test is no longer whether an individual is "primarily dependent" on government assistance. Rather, it is whether an individual participates in these housing programs at all.

The 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 result of the Proposed Rule is to penalize families for participating in the very housing programs that are meant to serve them. This directly contradicts the mission of PHAs, and as such, we respectfully submit that the Proposed Rule be abandoned in its entirety.

Further, we note that the Proposed Rule, even at this stage, holds a detrimental impact on the communities we serve. As discussed in further detail below, PHAs across the country are experiencing increased demands on their already limited and underfunded resources because of the ambiguity and confusion caused by the Proposed Rule.

Below are our detailed comments on the 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, 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. The public charge test does not apply to certain categories of immigrants. Among these categories are those 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 generally have not been subject to the public charge test and participation in those programs is limited to individuals who have eligible immigration status already.

If those individuals who receive housing assistance are not subject to the Proposed Rule, why then are the Section 8 and Public Housing programs specifically included as "negative factors" in the public charge evaluation? The inclusion of these housing programs in the Proposed Rule has created unnecessary confusion in our communities. 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 Proposed Rule.

2. The Proposed Rule is 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 Proposed Rule has created unnecessary fear in our 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 may make such a choice due to concern about the consequences to that person receiving public benefits…"*

It is also clear that DHS anticipated that the Proposed Rule would result in cost savings, estimated at $2.27 billion in "total reduction in transfer payments from federal and state governments … due to the disenrollment or foregone enrollment in public benefits programs." While DHS seems to acknowledge that the Proposed Rule will have "downstream and upstream impacts on state and local economies, large and small businesses, and individuals," 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 Proposed Rule. DHS overlooks the very real and practical administrative burdens and associated costs for this chilling effect.

We doubt that DHS's estimate cost savings took into account the lengthy waiting lists for participation in the Section 8 and Public Housing programs. Any disenrollment or return of housing assistance under the 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 be faced with increased administrative costs given the anticipated disenrollment/new enrollment turnover. PHAs will have to proceed with processing the next individual on the waiting list, as well as closing out the family that is exiting the program.

One CLPHA member PHA recounted a recent instance where a household had received Family Unification Program voucher rental assistance under the Section 8 Program since 2012. The family of eight included five minor children, including three minor siblings whom the head of household retained custody over after her own mother passed away. Ultimately, the PHA was notified that the family was choosing to withdraw from the program upon the advice of counsel because they feared it would endanger the immigration status of the husband of the head of household.

Clearly, the Proposed Rule will not result in any cost savings to PHAs.

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

Lastly, DHS fails to recognize that beyond "cost savings" and "reduced revenues," the 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 crisis leaves many households already having to make 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 which PHAs serve are often the same communities who are eligible to participate in the healthcare and nutrition programs the Proposed Rule likewise intends to include in the public charge test. Elimination of housing assistance coupled with the inclusion of healthcare and nutrition programs leaves little to no ability for these communities to thrive.

Under the Proposed Rule, those families who are in most need of such housing, health, and nutrition services will opt out of those programs, forgoing basic health and nutrition needs. This will severely impact the health of not only those families but the communities at large. Healthy families will reject assistance, e.g. healthcare, so 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.

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

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

Sincerely,

Sunia Zaterman
Executive Director
CLPHA

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Member
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