

## **TRUMP ADMINISTRATION’S PROPOSED “PUBLIC CHARGE” RULE**

### **“Technical” Fact Sheet for Housing and Homelessness Advocates**

**Last updated: October 18, 2018**

On October 10, 2018, the U.S. Department of Homeland Security (DHS) published their proposed rule in the Federal Register that seeks to change the way in which the agency determines whether an immigrant is likely to become a “public charge.”

This proposed rule directly affects immigrants and their families applying for and receiving public housing and Section 8 rental assistance. As proposed, the rule departs from longstanding immigration policy by making it more likely for certain immigrants to be deemed public charges because they have received, currently receive, or could receive certain kinds of public benefits.

This fact sheet highlights what housing and homelessness advocates should know about this proposed public charge rule and how they can fight back.

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## What is a public charge?

Currently, a “public charge” is defined as a person who is “**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 proposed rule would change this definition to include any applicant who **uses or receives, or is likely to use or receive, one or more public benefits, including non-cash benefits.**<sup>1</sup> The proposed rule provides an exclusive list of benefits that would be considered in a public charge determination, including Section 8 Housing Choice Vouchers, Project-based Section 8 Rental Assistance, and Public Housing. For a full list of covered programs, see Table 2 of this fact sheet.

## How is a public charge determination made?

Federal law currently requires immigration officials to look at multiple factors, including the noncitizen’s age, health, income, assets, family status, education, and skills, as well as whether an applicant has submitted a sufficient affidavit of support (a contract promising to support the immigrant at 125% of the federal poverty level). This totality of circumstances test allows immigration officials to consider whether the person has used or relied primarily on (1) public cash assistance or (2) long-term government-funded institutionalization.

DHS’s proposed rule broadens the definition of public charge to consider whether an applicant uses or receives, or is likely to use or receive, **cash or certain non-cash assistance** from the government for basic living necessities, such as housing, health care, and nutrition. The rule would weigh the use of benefits as a heavily negative factor. However, the proposed rule states that **non-cash benefits previously excluded from the public charge determination would be considered only if those benefits are received on or after a 60-day grace period that will begin after the final rule is published.**

The rule states that USCIS officers will also be able to consider whether an immigrant applicant used any covered benefits within the past 36 months. **However, this 36-month “look-back” period will not begin to toll for non-cash benefits until after the 60-day grace period.** Additionally, in a major shift from previous drafts, the public charge determination of an individual immigrant will only examine the immigrant’s personal use of these benefits—**children’s use of these benefits will not be counted against their parents.**

DHS has also proposed new factors that the agency would weigh negatively or positively when making a public charge determination. For example, negative factors would include not being proficient in English, having a bad credit score, earning less than 125% under the Federal Poverty Guidelines (FPG), being a child or a senior, having certain medical conditions without access to private health insurance, and lacking a high school diploma. A positive factor would be having an income of over 250% FPG.

The sponsor’s affidavit of support would be relevant (and, in many cases, required) but would not be sufficient on its own to overcome a public charge determination. However, a finding of an insufficient

affidavit of support will result in the immigrant being “found inadmissible based on public charge regardless of any other evidence the [immigrant] may submit.”<sup>iii</sup>

### Which housing programs are covered by the rule?<sup>iii</sup>

The proposed rule will only apply to public benefits programs that are specifically enumerated in the rule.<sup>iv</sup> **The proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program,<sup>v</sup> Project-Based Section 8 Rental Assistance,<sup>vi</sup> and Public Housing.<sup>vii</sup>**

The proposed rule would cover the Section 8 Moderate Rehabilitation Single Room Occupancy program, which assists very low-income, single, homeless individuals in privately owned, rehabilitated buildings. Additionally, the rule would potentially include the Housing Choice Voucher Homeownership and Veteran Affairs Supportive Housing (VASH) voucher programs.

Other federal, state, and local housing programs may be implicated where layers of subsidies, including one of the explicitly mentioned programs, are used to make units affordable to very low-income families.

### Will an applicant’s dependents’ use of housing benefits count against the applicant?

The proposed rule **will not consider whether an applicant’s dependents, including immigrant and U.S. citizen children, receive housing subsidies.** However, if a child is applying for status themselves, any subsidy that they receive would be weighed against them in a public charge test.

This means that mixed-status families would not be explicitly targeted under the proposed rule. However, given the breadth of factors the rule permits USCIS officers to consider under its totality of the circumstances examination, advocates are concerned that mixed-status families may still be harmed by the proposed rule when it is applied.

Dependents may also potentially be harmed if their family members choose to forgo covered housing benefits due to concerns that it could jeopardize their ability to change immigration status. For a fact pattern where an immigrant may be faced with this decision, see Example 1 under the question: ***How will the use of monetizable (Section 8 programs) housing benefits be evaluated?***

### Who would be affected by the rule?

The rule would primarily affect noncitizens who are applying for lawful permanent resident status, individuals seeking an extension of or changes to their non-immigrant status, and immigrants seeking admission into the United States. However, some immigrants will not be subject to the public charge rules. 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., several other categories of noncitizens, as well as lawful permanent residents applying for U.S. citizenship.

Note that the Public Housing and Section 8 programs are already subject to immigration status requirements under Section 214 of the Housing and Community Development Act.<sup>viii</sup> Therefore, only

certain categories of noncitizens are eligible for these programs. Table 1 examines the categories of immigrants eligible to receive Public Housing and Section 8 and whether these immigrants would be subject to public charge determinations.

<b>Table 1 – Comparison: Eligibility for Housing Assistance and Public Charge Exemptions under Proposed Rule</b>	
<b>Immigrants Eligible for Public Housing and Section 8 Programs</b>	<b>Subject to the Public Charge Test?</b>
Lawful Permanent Residents. <sup>ix</sup>	No (with limited exceptions). <sup>x</sup>
Immigrants granted lawful permanent residence through registry under section 249 of the Immigration and Nationality Act (8 U.S.C. § 1259). <sup>xi</sup>	No (with limited exceptions). <sup>xii</sup>
Asylees. <sup>xiii</sup>	No. <sup>xiv</sup>
Refugees. <sup>xv</sup>	No. <sup>xvi</sup>
Parolees. <sup>xvii</sup>	Yes (with some exceptions) – public charge rule applies when seeking change of status. <sup>xviii</sup>
Granted withholding of Removal. <sup>xix</sup>	Yes – public charge rule applies when seeking change of status. <sup>xx</sup>
Immigrants admitted for permanent residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a]. <sup>xxi</sup>	No (with limited exceptions). <sup>xxii</sup>
Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a]. <sup>xxiii</sup>	Yes – public charge rule applies when seeking change of status. <sup>xxiv</sup>
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). <sup>xxv</sup>	Yes. <sup>xxvi</sup>
Violence Against Women Act (VAWA) Self-Petitioners. <sup>xxvii</sup>	No. <sup>xxviii</sup>
Immigrants that seek, or have received, official T-visa status as a Survivor of Trafficking. <sup>xxix</sup>	No (with limited exceptions). <sup>xxx</sup>

### **How will the use of monetizable housing benefits (Section 8 programs) be evaluated?**

The proposed rule states that USCIS will only take into consideration the portion of Section 8 benefits that are attributable to the applicant. The rule will not take into account the Section 8 benefits received by the applicant’s children. An applicant’s receipt of monetizable benefits will be weighed against them if

the total value of these benefits attributable to them over 12 consecutive months exceeds 15% of the Federal Poverty Guidelines (FPG) for a household of one (or \$1,821 in 2018).

In the case of mixed-status families, USCIS will not consider benefits received by the mixed-status household if the applicant is ineligible to receive that benefit.<sup>xxxii</sup> This means that mixed-status families would not be explicitly targeted under the proposed rule. However, given the breadth of factors that the rule permits USCIS officers to consider under its totality of the circumstances examination, advocates are still concerned that mixed-status families may still be harmed by the proposed rule when it is applied.

### **Example 1 – All Family Members are Immigrants Eligible to Receive Housing Assistance**

- The Smith family, a father and two teenaged 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 married a U.S. Citizen and applies to change his status to that of a Lawful Permanent Resident through a family-based visa petition.
- Because Mr. Smith does not fall into an immigrant category that is exempted under the public charge rule, he is subject to the public charge test.
- To determine the amount attributable to Mr. Smith, USCIS would divide the total voucher subsidy by the number of eligible household members:
  - **\$1,200 a month/ 3 eligible household members = \$400 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 a month x 12 consecutive months equals \$4,800, which exceeds \$1,821 (15% of FPG for household of one in 2018)
  - This means that Mr. Smith would be determined presently to be a public charge.
- Mr. Smith could have opted to forgo his part of the subsidy so as not to have this negative factor weigh against him in the public charge test. If this happens, the voucher subsidy would be prorated, harming the rest of the household as the unit would become less affordable for everyone in the family.

### **Example 2 – Mixed-Status Family**

- The Jones family includes two household members—Mrs. Jones and her infant, Sarah. Sarah was born in the U.S. and is a U.S. citizen who qualifies for the Section 8 Housing Choice Voucher Program. Mrs. Jones, who entered the U.S. on a student visa, is an immigrant who is not eligible for assistance under the program. The Jones family receives \$400 a month under the Section 8 Housing Choice Voucher Program.

- Mrs. Jones applies to change her status to that of a Lawful Permanent Resident through a family-based petition, and is a category of immigrant that is not exempted from the public charge rule. However, since Mrs. Jones is not eligible to receive benefits under the Section 8 Housing Choice Voucher Program, USCIS **will not count any amount of the voucher against Mrs. Jones in her public charge determination.**
- However, given the breadth of factors the rule permits USCIS officers to consider under its totality of the circumstances examination, advocates are still concerned that Mrs. Jones may still be harmed by the proposed rule when it is applied.

### How will the use of non-monetizable housing benefits (Public Housing) be evaluated?

Although the proposed rule discusses the valuation of monetizable benefits, the rule does not specifically address the evaluation of non-monetizable benefits, such as public housing assistance. It simply indicates that non-monetized benefits will be weighed against the applicant if it was received for more than 12 months in the aggregate within a 36-month period. Furthermore, the applicant's receipt of two non-monetized benefits, such as public housing and Medicaid, in the same month would count as two months.

### What happens when an applicant receives both monetizable and non-monetizable benefits?

According to the proposed rule, an applicant's receipt of both types of benefits would lower the threshold of what would count against the applicant. In these situations, if the total value of the monetizable benefits is equal to or less than 15% FPG for a household of one within any 12 consecutive months AND the non-monetizable benefits were received for more than 9 months total in 36 months, then receipt of these benefits would weigh against the applicant. For example, an applicant living in public housing for 9 or more months within a 36-month period that also receives money from SNAP (even if it is less than 15% FPG for a household of one) will be found to presently be a public charge.

### How does the rule affect the use of housing and homeless assistance programs?

As discussed above, **the proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance, and Public Housing.** Unlike earlier versions, the published proposed rule does not include homeless assistance programs.

**The rule would have a chilling effect on immigrant families not subject to the rule and would undermine the goal of self-sufficiency.** This proposed rule will increase the panic, fear, and confusion already felt by millions of immigrant families across the country due to the Trump Administration's ongoing anti-immigrant rhetoric and policies. Regardless of whether they are technically subject to the rule, this proposal will deter many eligible immigrant families from seeking much-needed housing and homelessness benefits. Those already participating in these programs will feel compelled to give up the lifeline assistance that keeps their families one step away from homelessness. Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of

employment, and mental health problems.<sup>xxxii</sup> Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. The proposed rule threatens to undermine the overall well-being of low-income immigrants and their families.

**The rule would exacerbate child poverty and homelessness.** The proposed rule would have dire effects on health and educational outcomes for the children of immigrants, hampering economic mobility, increasing child and family poverty, and undercutting ongoing efforts to prevent and end homelessness.<sup>xxxiii</sup> Programs such as SNAP and the Housing Choice Voucher program help support children and families on their path to self-sufficiency, and open up educational and economic opportunities in the long-term, especially for individuals who received assistance as young children.<sup>xxxiv</sup> Such a rule is likely to trap low-income immigrant families in intergenerational poverty, and harm society and the economy in the process.<sup>xxxv</sup>

### When would this rule be in effect?

DHS published the rule in a notice for proposed rulemaking (NPRM) in the Federal Register, on October 10, 2018, starting the 60-day window for the public to comment on the proposed rule. The deadline for comments is **December 10, 2018**. Once the public comment period expires, DHS must then review and address all public comments made and prepare a final rule to be reviewed by the Office of Management and Budget before a finalized rule could take effect. An overview of the process is available [here](#). It could take months or a year or more for the final rule to be in effect.

### What should I tell clients and others who are worried about this rule?

This is only a proposal. The rules governing public charge determinations in the U.S. have not yet changed. The proposed rule indicates that any changes to the consideration of benefits use will apply only to benefits received 60 days after the final rule is published. The final rule is unlikely to be published for months—to even more than a year—from now. There is significant value for families to continue to receive housing and nutrition assistance and healthcare in promoting health, stability, and ensuring self-sufficiency. Individuals who have questions about their own situation should consult with an immigration attorney. For more information, see the Mom's Rising fact sheet on [What You Need to Know on the Public Charge Rule & Immigrant Families](#). We encourage everyone to fight back by submitting comments to DHS opposing this proposed rule (see below).

### What can I do?

We are working closely with the Protecting Immigrant Families (PIF) Campaign, led by the National Immigration Law Center and the Center for Law and Social Policy, to coordinate advocacy efforts.

- We strongly urge advocates to submit comments concerning the catastrophic impact that this rule would have on immigrants and their families. You can submit comments to [regulations.gov](#) or via the Protecting Immigrant Families Campaign's [website](#).
- You should educate state and local policy makers about how this rule will have negative effects on housing and homelessness by using client stories and data on how immigrants are served by homelessness and housing benefits.

## Where can I get more information?

The Protecting Immigrant Families Campaign's [website](#) has up-to-date resources on the public charge rule and related policies. This [fact sheet](#) by the Center for Law and Social Policy has more details regarding the proposed public charge rule.

For further assistance, please contact Karlo Ng at [kng@nhlp.org](mailto:kng@nhlp.org), or Arianna Cook-Thajudeen at [acooktha@nhlp.org](mailto:acooktha@nhlp.org).



**Table 2: Comparison Chart between Proposed Public Charge Rule and Current Guidance**  
 Source: Updated version of a chart created by the Kaiser Family Foundation

	<b>Current Public Charge Policy (Based on 1999 Field Guidance)</b>	<b>Draft Proposed Rule</b>
<b>Definition of Public Charge</b>	A noncitizen who has become or who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”	A person who uses or receives one or more public benefits. “Public benefits” are limited to a list of specific programs enumerated in the rule. This list includes federal, state, or local cash assistance, federal “monetized” non-cash benefits, and federal “non-monetizable” benefits (for a list, see below under “Benefits that May be Considered”).
<b>Consideration of Use of Public Benefits in a Public Charge Determination</b>	<ul style="list-style-type: none"> <li>• May take into consideration past and current receipt of cash public assistance for income maintenance or institutionalized long-term care</li> <li>• No weight should be placed on receipt of non-cash benefits or receipt of cash benefits for purposes other than income maintenance</li> </ul>	May consider: <ul style="list-style-type: none"> <li>• Whether a person uses or receives a covered public benefit</li> <li>• Whether a person has used or received a covered public benefit within the last 36 months</li> <li>• Whether individual has received or is likely to receive any federal housing assistance</li> </ul>
<b>Consideration of Use of Public Benefits by Children and Other Family Members in a Public Charge Determination</b>	<ul style="list-style-type: none"> <li>• Cash benefits received by children or other family members should not be attributed to the individual, unless the family member’s benefits are the family’s sole source of support.</li> </ul>	<ul style="list-style-type: none"> <li>• Will not count dependents, including U.S. citizen children, request, receipt or past receipt of public benefits against the applicant.</li> </ul>
<b>Benefits that may be considered for public charge determinations (non-exhaustive list)</b>	<ul style="list-style-type: none"> <li>• SSI</li> <li>• TANF</li> <li>• State/local cash assistance programs</li> <li>• Public assistance for long-term care in an institution (including Medicaid)</li> </ul>	<ul style="list-style-type: none"> <li>• Cash Benefits                             <ul style="list-style-type: none"> <li>○ SSI</li> <li>○ TANF</li> <li>○ Federal, State or local cash assistance programs for income maintenance</li> </ul> </li> <li>• Monetized Non-Cash Benefits                             <ul style="list-style-type: none"> <li>○ SNAP (formerly Food Stamps)</li> <li>○ Section 8 Housing Choice Voucher Program</li> <li>○ Section 8 Project-Based Rental Assistance</li> </ul> </li> <li>• Non-Monetized Non-Cash Benefits                             <ul style="list-style-type: none"> <li>○ Medicaid</li> <li>○ Public assistance for long- and short-term institutionalized care</li> <li>○ Premium and Cost Sharing Subsidies</li> </ul> </li> </ul>

		<p style="text-align: center;"><b>for Medicare Part D</b></p> <ul style="list-style-type: none"> <li>○ <b>Public Housing</b></li> </ul>
<p><b>Examples of Benefits that may not be considered for public charge determinations</b></p>	<ul style="list-style-type: none"> <li>● <b>Medicaid and other health insurance and health services (except for institutional long-term care)</b></li> <li>● <b>CHIP</b></li> <li>● <b>Nutrition programs, including SNAP (formerly Food Stamps), WIC, the National School Lunch and Breakfast program, and other supplementary and emergency food assistance programs</b></li> <li>● <b>Housing benefits</b></li> <li>● <b>Child care services</b></li> <li>● <b>Energy assistance, such as LIHEAP</b></li> <li>● <b>Emergency disaster relief</b></li> <li>● <b>Foster care and adoption assistance</b></li> <li>● <b>Educational assistance, including Head Start</b></li> <li>● <b>Job training programs</b></li> <li>● <b>In-kind community-based programs</b></li> <li>● <b>State and local programs</b></li> <li>● <b>Earned cash payments (e.g., Social Security, veteran’s benefits)</b></li> <li>● <b>“Special purpose” cash benefits or any other non-cash benefit programs</b></li> </ul>	<ul style="list-style-type: none"> <li>● <b>All public benefit not enumerated in the rule will not be subject to public charge determinations</b></li> <li>● <b>“Monetizable” benefits where the cumulative value use does not exceed 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months</b></li> <li>● <b>“Non-monetizable” benefits received for less than 12 months within a 36 month period. Note that months are calculated by benefit, such that receipt of two non-monetizable benefits within one month is counted as two months.</b></li> <li>● <b>However, if an individual receives both monetizable and non-monetizable benefits, any use of monetizable benefits and more than 9 months within a 36 month period will be counted against the applicant.</b></li> </ul>

<sup>i</sup> The rule defines “public benefits” as

“(1) [A]ny of the following monetizable benefits, where the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per month FPG for the months during which the benefits are received.

(i) Any Federal, State, local, or tribal cash assistance for income maintenance, including:

(A) Supplemental Security Income (SSI), 42 U.S.C. 1381 *et seq.*;

(B) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 *et seq.*; or

(C) Federal, State or local cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which may exist under other names); and

(ii) Non-cash benefits, monetized as set forth in 8 CFR 212.24:

(A) Supplemental Nutrition Assistance Program (SNAP, formerly called “Food Stamps”), 7 U.S.C. 2011 to 2036c;

(B) Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under 24 CFR part 984; 42 U.S.C. 1437f and 1437u;

(C) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under 24 CFR parts 5, 402, 880 through 884 and 886; and

(2) Any of one or more of the following non-monetizable benefits if received for more than 12 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months):

(i) Medicaid, 42 U.S.C. 1396 *et seq.*, except for:

(A) Benefits paid for an emergency medical condition as described in section 1903(v) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v), 42 CFR 440.255(c);

(B) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.*;

(C) School-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law;

(D) Medicaid benefits received by children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption in the United States by the U.S. citizen parent(s) or, once meeting other eligibility criteria as required by the Child Citizenship Act of 2000, Public Law 106-395 (section 320(a)-(b) of the Act, 8 U.S.C. 1431(a)-(b)), in accordance with 8 CFR part 320;

(E) Medicaid benefits received by the children of U.S. citizens who are entering the United States for the primary purpose of attending an interview under the Child Citizenship Act of 2000, Public Law 106-395 (section 322 of the Act, 8 U.S.C. 1433), in accordance with 8 CFR part 322.

(ii) Any benefit provided for institutionalization for long-term care at government expense;

(iii) Premium and Cost Sharing Subsidies for Medicare Part D, 42 U.S.C. 1395w-114;

(iv) Subsidized Housing under the Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

(3) The receipt of a combination of monetizable benefits under paragraph (b)(1) of this section where the cumulative value of such benefits is equal to or less than 15 percent of the Federal Poverty Guidelines for a household size of one within any period of 12 consecutive based on the per-month FPG for the months during which the benefits are received, together with one or more non-monetizable benefits under paragraph (b)(2) of this section if such non-monetizable benefits are received for more than 9 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months);

(4) DHS will not consider any benefits, as defined in paragraphs (b)(1) through (b)(3) of this section, received by an alien who, at the time of receipt, filing, or adjudication, is enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act, in the public charge inadmissibility determination." Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51289 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.21).

<sup>ii</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51178 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

<sup>iii</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

<sup>iv</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51289 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.21(a)-(b)).

<sup>v</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51289 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.21(b)(1)(ii)(B)).

<sup>vi</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51289 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.21(b)(1)(ii)(C)).

<sup>vii</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51289 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.21(b)(2)(iv)).

<sup>viii</sup> 42 U.S.C. § 1436a.

<sup>ix</sup> 42 U.S.C. § 1436a(a)(1).

<sup>x</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51127 n.68 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248) ("Lawful permanent residents seeking entry into the United States typically are not applicants for admission, and therefore, generally are not subject to section 212(a) of the INA, 8 U.S.C. 1182(a), including INA section 212(a)(4), 8 U.S.C. 1182(a)(4), but lawful

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permanent residents described in INA section 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C), are regarded as seeking admission and generally are subject to inadmissibility grounds.”).

<sup>xi</sup> 42 U.S.C. § 1436a(a)(2).

<sup>xii</sup> These individuals are LPRs. Individuals who apply for LPR status via Registry are not subject to a public charge determination, see Inadmissibility on Public Charge Grounds, 8 C.F.R. § 212.23(a)(11) (published on DHS website Sept. 22, 2018). Limited exceptions may apply, see *supra* note x.

<sup>xiii</sup> 42 U.S.C. § 1436a(a)(3).

<sup>xiv</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51292 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.23(a)(2)).

<sup>xv</sup> 42 U.S.C. § 1436a(a)(3).

<sup>xvi</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51292 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.23(a)(1)).

<sup>xvii</sup> 42 U.S.C. § 1436a(a)(4).

<sup>xviii</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51127 n.70 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248) (“While an alien paroled into the United States is not subject to an admission determination at the time the decision to parole the alien is made, if an alien who has been paroled into the United States is applying for an immigration benefit for which admissibility is required, e.g. adjustment of status, the parolee will be subject to section 212(a)(4) of the Act in the context of seeking the subsequent immigration benefit.”). However, certain subsets of parolees have an independent pathway to LPR status and may be exempt from public charge.

<sup>xix</sup> 42 U.S.C. § 1436a(a)(5).

<sup>xx</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51127 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248) (indicated in second column, fifth row, of Table 2). A public charge determination will not be made when the decision to withhold removal is made. However, since this category of immigrant does not have an independent avenue for seeking LPR status, when individuals from this category seek a change of status, they are subject to the public charge rule depending on the pathway to status they take (e.g. a family-based visa petition).

<sup>xxi</sup> 42 U.S.C. § 1436a(a)(6).

<sup>xxii</sup> This category of immigrant is from the Immigration Reform and Control Act of 1986. LPRs, including those who secured status under this law, are generally not subject to a public charge determination. Limited exceptions may apply, see *supra* note x.

<sup>xxiii</sup> 42 U.S.C. § 1436a(a)(6).

<sup>xxiv</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51153 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248) (indicated in second column, fourth row of Table 9). While there aren’t many people left in this category (it’s possible if a person is still appealing a very old case), they could be subject to specific public charge rules when they apply for adjustment of status unless the applicant is or was an aged, blind, or disabled individual; see 8 U.S.C. § 1255a(d)(2)(B)(ii)(IV).

<sup>xxv</sup> 42 U.S.C. § 1436a(a)(7).

<sup>xxvi</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248)). COFA migrants are not listed in any exemptions under the rule, and may be subject to public charge determinations when they seek to enter or reenter the US.

<sup>xxvii</sup> Memorandum from Tonya Robinson, HUD Acting General Counsel, to Julian Castro, HUD Secretary re: Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (Dec. 15, 2016).

<sup>xxviii</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51292 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.23(a)(20)).

<sup>xxix</sup> 22 U.S.C. § 7105(b)(1)(A).

<sup>xxx</sup> Individuals seeking T-status are exempt under the rule; see Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51292 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. § 212.23(a)(17)). T-visa holders seeking LPR status are eligible for a waiver to public charge determinations; see, Inadmissibility on Public Charge Grounds, 8 C.F.R. § 212.23(b)(1) (published on DHS website Sept. 22, 2018). However, if a T-visa holder chooses to adjust their status outside of the T-visa pathway, they may be subject to public charge. For example, if a T-visa holder sought adjustment of status through a family-based petition rather than waiting until they are eligible via the T-visa pathway, they could be subjected to the public charge rule.

<sup>xxxi</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51218 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248) (“[F]or benefits which are provided on the basis of a household and not the individual, USCIS would only take into consideration the portion of the benefit that is

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attributable to the alien. However, in circumstances where the alien is not eligible for a given benefit but is part of a household that receives the benefit (such as by living in a household that receives a housing benefit by virtue of other household members' eligibility), such benefit based on the eligibility and receipt of such benefit(s) by his/her household members, USCIS would not consider such use for purpose of a public charge inadmissibility determination.”)

<sup>xxxii</sup> E.g., Meredith Horowki, *Housing Instability and Health: Findings from the Michigan Recession and Recovery Study*, National Poverty Center Policy Brief #29 (March 2012), [http://www.npc.umich.edu/publications/policy\\_briefs/brief29/NPC%20Policy%20Brief%20-%2029.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief29/NPC%20Policy%20Brief%20-%2029.pdf); Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, Soc. Problems 1 (2016), available at <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824><http://pediatrics.aappublications.org/content/early/2018/01/18/peds.2017-2199> (finding that housing instability can lead to employment insecurity).

<sup>xxxiii</sup> See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Policy Priorities (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term-gains>; see also Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund* (Jan. 2015), available at <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

<sup>xxxiv</sup> See Kristin F. Butcher, *Assessing the Long-Run Benefits of Transfers to Low-Income Families*, Brookings Metro (January 2017), [https://www.brookings.edu/wp-content/uploads/2017/01/wp26\\_butcher\\_transfers\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2017/01/wp26_butcher_transfers_final.pdf) (citing findings that there were long-term improvements in income and educational outcomes for individuals who received housing assistance as young children that transferred them to lower poverty neighborhoods); Sandra J. Newman et al., *The Long-Term Effects of Housing Assistance on Self-Sufficiency*, U.S. Department of Housing and Urban Development (December 1999), <https://www.huduser.gov/portal/Publications/pdf/longterm.pdf>; Katie Hamm et al., *The Trump Plan to Cut Benefits Threatens Children*, Center for American Progress (Apr. 10, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/04/10/449262/trump-plan-cut-benefit-programs-threatens-children/>; Leila Schochet, *Trump's Immigration Policies are Harming American Children*, Center for American Progress (July 31, 2017), <https://www.americanprogress.org/issues/early-childhood/reports/2017/07/31/436377/trumps-immigration-policies-harming-american-children/>; Peter A. Tatian & Christopher Snow, *The Effects of Housing Assistance on Income, Earnings and Employment*, 8 Cityscape: A Journal Of Policy and Development and Research 135, 158 (2005). <https://www.huduser.gov/periodicals/cityscape/vol8num2/ch7.pdf> (finding evidence that benefiting from housing assistance increases income and earnings for certain groups).

<sup>xxxv</sup> Cesar M. Estrada, *How Immigrants Positively Affect the Business Community and U.S. Economy*, Center for American Progress (June 22, 2016), <https://www.americanprogress.org/issues/immigration/news/2016/06/22/140124/how-immigrants-positively-affect-the-business-community-and-the-u-s-economy/>.