TO: Honorable Members of the Rules, Elections and Intergovernmental Relations and Neighborhoods Committee

FROM: Sharon M. Tsao, Chief Legislative Analyst

DATE: November 15, 2018

Council File No: 18-0002-S126
Assignment No: 18-11-1026


CLA RECOMMENDATION: Adopt the attached Resolution to include in the City’s 2017-2018 Federal Legislative Program, OPPOSITION to the U.S. Department of Homeland Security proposed rule change titled “Inadmissibility on Public Charge Grounds” and authorize the Housing + Community Investment Department to submit the attached comments to the Federal Registry Docket USCIS-2010-0012 by December 10, 2018.

SUMMARY
On October 10, 2018, a Resolution (Martinez-Cedillo) was introduced to OPPOSE the Department of Homeland Security (DHS) Proposed rule change titled “Inadmissibility on Public Charge Grounds.” According to the Resolution, on September 21, 2018, DHS released a proposed rule change to redefine how DHS would determine whether an individual is inadmissible to the United States because he or she is likely, at any time in the future, to become a “public charge” under federal law.

According to the Resolution, the proposed rule would impact those who have received or are currently receiving any public assistance such as food stamps, federal housing, rental assistance and healthcare benefits and are seeking an immigration status change. Also, the proposed rule could affect individuals seeking a change in immigration status, those who are under 18 or over 61 years of age, have a medical condition that could interfere with work or school, are without a health plan, have bad credit, or other factors that DHS may use to determine ineligibility.

The Resolution states that such a radical change could create significant barriers for low-income immigrants applying for U.S. legal residency or adjusting their legal status, and for employers who may face difficulties retaining workers. Lastly, the Resolution states that the proposed rule would have a devastating impact on the well-being of children and families in Los Angeles who lawfully receive public benefits. Therefore, the Resolution opposes the DHS Public Charge rule change.

BACKGROUND
On October 10, 2018, the U.S. DHS released a notice of proposed rulemaking (NPRM) that would redefine the term “public charge.” This term is used by DHS to determine whether an individual seeking immigration status is likely to become primarily dependent on the federal government for subsistence. Currently, the term “public charge” is defined as an individual who is primarily dependent on federal government assistance.

Public Charge Rule
The term currently applies to reliance on cash benefits such as the Temporary Assistance for Needy Families (TANF) program or Supplemental Security Income (SSI) as well as government funded long-term institutional medical care. The last change relative to the definition of “public charge” was under the Clinton Administration which clarified the definition to only apply to cash-based income assistance programs.

The proposed rule would expand the definition of “public charge” to also include government funded long-term institutional care, Supplemental Nutrition Assistance program (SNAP), non-emergency Medicaid, Medicare D (low-income subsidy), public housing, Section 8 housing vouchers and rental assistance. Programs excluded from
current law and the proposed rule are disaster relief, emergency medical assistance, early education and child
development services and employment and training programs.

In addition to broadening the scope of federal public assistance programs that may be considered if used by an
individuals, the proposed rule also establishes new factors that may be used by immigration officials to consider
when evaluating if someone is likely to become a “public charge at any point in the future. These additional
factors include:

- Current use of public benefits
- Amount of benefits used
- Being younger than 18 and over 61 years of age
- Having a medical condition that may affect an individual’s ability to work, attend school or care
  for themselves
- Not having private health insurance
- Having several children or other dependent family members
- Limited English proficiency
- Bad credit or low credit score
- No employment history.

Additionally, the proposed rule would reduce the dollar amount an individual may receive in public assistance
before they are deemed a “public charge.” According to an analysis by the National Association of Counties, an
individual who accepts the equivalent of at least 15 percent of federal poverty guidelines ($1,800 per year or $150
per month) would be considered a “public charge.”

According to the National Association of Counties, the “public charge” rule would be applied to any individual
seeking to come to the United States through various visas. The proposed rule would also impact individuals
already in the country who are seeking to become permanent legal residents or to extend their stay in the country
by renewing their immigration status.

In determining if an individual is a “public charge,” immigration authorities would only consider benefits an
individual is receiving for him or herself. An individual receiving assistance for a child is not considered to be
using public benefits and would not be considered an inadmissible public charge.

The National Association of Counties anticipates that the impact of the proposed rule would be fewer individuals
accessing federal benefits such as SNAP, Section 8 housing vouchers and healthcare services, counties may face
increased demand for assistance from these individuals and their families. The proposed rule could impose
burdensome new tracking and reporting requirements and may discourage immigrants from seeking federal health
benefits.

City of Los Angeles Comments

Los Angeles Housing + Community Investment Department (HCID)

HCID report that the following City programs and policies will be directly negatively impacted by the
proposed Public Charge rule:

**Permanent Support Housing- Section 8 Vouchers**

The proposed public charge rule would dissuade authorized immigrants who legally qualify for
Section 8 vouchers from seeking housing assistance. The rule may also shut out immigrants and
their citizen relatives from benefiting from the new housing developments funded under Measure
HHH. Furthermore, the State of California is making new funding resources available to address
the homeless and affordable housing crisis. As a result, unhoused immigrants may remain on the
streets or in temporary shelters and local agencies will have fewer resources to address the
increasing homelessness crisis.
**Affirmatively Furthering Fair Housing (AFFH)**

The federal proposed rule:

- Goes against the City’s commitment to ensure fair housing for its residents. As a direct recipient of federal Consolidated Plan program funds such as HOME, Community Development Block Grant, Housing Opportunities for Persons with HIV/AIDS (HOPWA), and ESG, the HCIDLA has been required by HUD to certify its promise to affirmatively further fair housing to remain eligible to receive its entitlement funds for Los Angeles over the past years.

- Threatens the City’s ability to continue protecting and enforcing housing rights for Los Angeles residents and cause many residents to be denied affordable housing that is safe, clean, and accessible.

- Will make it difficult for legal residents such as mothers with children, persons with disabilities, monolingual speaking households and other vulnerable and protected, to rightfully seek housing assistance and/or avoid any type of discriminatory actions when seeking housing or while already housed in federally funded housing.

**Housing Opportunities for Persons with HIV/AIDS (HOPWA)**

HOPWA, a countywide, federal program managed by HCIDLA, aims to increase housing stability, expand access to care, and reduce the risk of homelessness for low-income individuals and families living with HIV/AIDS.

- The proposed rule has created a growing sense of fear and a chilling effect for some clients.

- HOPWA service providers are reluctant to advise one way or the other, but are simply advising clients, to the best extent possible, based on what an expanded public charge analysis/review can mean for them in the near and long-term.

**Domestic Violence Shelter Operations (DVSO)**

The DVSO program for the City of Los Angeles offers both emergency and transitional shelter services for survivors of Domestic Violence. Shelters provide confidential protection from a dangerous or life-threatening home environment. Emergency shelters provide refuge for 1-3 months, and transitional shelters provide up to 6+ months of safe housing. Individuals in need of shelter assistance may be discouraged from seeking the services needed.

**Family Source Center (FSC)**

FSCs provide core services to low-income families across the City, with the goal of increasing income and improving academic achievement for youth and adults. All 16 FSCs offer case management and other comprehensive services.

- The proposed rule changes would discourage residents who are seeking to better their lives through the FSC provide services and is counterproductive in achieving the key goals to attain self-sufficiency.
Commissions on Community Engagement (CCE)
The CCE unit is comprised of the Commission on the Status of Women, Commission on Community and Family Services, Human Relations Commission, Community Action Board, Affordable Housing Commission, and Transgender Advisory Committee. The Commissions include over 60 appointed commissioners representing a diverse pool of community leaders and subject experts. The commissions have expressed that the proposed rule change:

- Would further intensify inequity in Los Angeles and would impact immigrants who are people of color, women, LGBTQ individuals, and those who are economically disadvantaged.
- Dissuade immigrants and their relatives served by the Transgender Advisory Council could potentially dissuade from accessing key services.
- Impact female immigrants with fear, forcing them to find alternative means of feeding their families.
- The proposed rule changes create a state of fear and that directly impact a significant percentage of the City’s population that would result in dire consequences.

Human Relations Commission (HRC)
Comments submitted by HRC state that the proposed rule:

- Promotes a culture of exclusivity and will lead to decreased trust and increased marginalization across a vast swath of Los Angeles populations.
- Targets applicants for residency, otherwise lawful immigrants who should be welcomed and placed on the path to citizenship in accordance with the nation’s laws.
- Punishes individuals for the use of the most basic public benefits and may deter U.S. citizen children from using such benefits.
- Deters individuals on a legal path to citizenship from using critical services.

Additional Impacts of the Proposed Rule Change
According to the Henry J. Kaiser Family Foundation (Kaiser Foundation), approximately 94 percent of all noncitizens who originally entered the U.S. without legal permanent resident status have at least one characteristic that DHS could potentially weigh negatively in a “public charge” determination and over 33 percent have income below the 125 percent federal poverty line threshold. The Kaiser Foundation anticipates high levels of disenrollment among noncitizens without legal status because participation in the program could negatively affect their chances of adjusting their legal status in the future. There would also be disenrollment among families with U.S. born children due to increased fear and confusion. Decreased participation in Medicaid would increase the uninsured rate among immigrant families, reducing access to care and contributing to worse health outcomes.

Conclusion
The proposed rule was published on October 10, 2018 and provides a 60-day public comment period. The public has until December 10, 2018 to submit comments to the federal register. Subsequently, it is anticipated that DHS will consider all comments and issue a final rule.

Felipe Valladolid Chavez
Legislative Analyst

SMT:fvc

Attachment: 1) Resolution (Martinez-Cedillo)
2) Los Angeles Housing + Community Investment Department Comments
3) Los Angeles Human Relations Commission Comments
WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, on September 21, 2018 Department of Homeland Security (DHS) released a proposed rule change, to add a new regulation that would guide how the DHS will determine whether an individual is inadmissible to the United States because he or she is likely, at any time in the future, to become a “public charge” under federal law; and

WHEREAS, individuals applying for a visa, admission at a port of entry, or adjustment of status would be required to prove that they would not be a “public charge;” and

WHEREAS, DHS proposes to include the acceptance of public benefits as a factor in immigration public charge determinations; and

WHEREAS, the proposed rule would impact those who have received or are currently receiving any public assistance such as food stamps, federal housing, rental assistance and healthcare benefits and are seeking an immigration status change; and

WHEREAS, the proposed rule change could also affect individuals seeking a change in immigration status who are under 18 or over 61; have a medical condition that could interfere with work or school; are without a health plan; have bad credit; or other factors that DHS may use to determine ineligibility; and

WHEREAS such a radical change would create significant barriers for low-income immigrants applying for U.S. residency or adjusting their legal status, discourage visa holders from applying for public benefits, and for employers who may face difficulties retaining workers; and

WHEREAS, the proposed rule change would have a devastating impact on the well-being of children and families in Los Angeles who lawfully receive public benefits; and

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 Federal Legislative Program OPPOSITION to the Department of Homeland Security’s Proposed Rule titled “Inadmissibility on Public Charge Grounds.”

PRESENTED BY: NURY MARTINEZ
Councilmember, 6th District

SECONDED BY: 

OCT 10 2018
November 15, 2018

HCIDLA Comments on Proposed Changes to the Public Charge Rule

The proposed Public Charge rule would impact a variety of policies and programs managed by the Housing + Community Development Department (HCIDLA). HCIDLA oversees the financing, planning, and monitoring of affordable housing development, creates goals and strategies to affirmatively further fair housing, and implements various social service delivery programs including the Family Source System, Domestic Violence Shelter Operations, Housing Opportunities for Persons with HIV/AIDS (HOPWA), and Supportive Housing Services for homeless individuals and families.

Trust of the government and access to services are two primary pillars in providing effective services to its communities and residents. These two key issues are particularly salient among the immigrant population, where lack of trust can lead to a number of deleterious consequences. HCIDLA can report, for example, that documented and undocumented immigrants alike report crime and access services less often when there is a lack of trust. This rule change would increase fear and potentially worsen these same consequences, endangering public safety, public health and increase homelessness.

The following programs and policies will all be directly and negatively impacted by the proposed Public Charge rules:

**Permanent Support Housing:**

Several of the permanent supportive housing projects in Los Angeles depend upon Housing Choice Vouchers (Section 8 Vouchers) as an additional funding source. Because of the increasing cost of land and construction, permanent supportive housing developments have to layer multiple funding sources together in order to cover costs and keep rents affordable to extremely low-income tenants. Incorporating public vouchers into projects allows developers to better leverage local funding sources like HHH thereby allowing the city’s local dollars to stretch further.

The proposed public charge rule would dissuade authorized immigrants who legally qualify for Section 8 vouchers from seeking housing assistance. The rule may also shut out immigrants and their citizen relatives from benefiting from the new housing developments funded under HHH. Furthermore, the State of California and other localities throughout the nation, are making new funding resources available to address the homeless and affordable housing crisis. As a result, unhoused immigrants may remain on the streets or in temporary shelters.
and local agencies will have fewer resources to address the increasing homelessness crisis.

The City of Los Angeles’ Commitment to Affirmatively Furthering Fair Housing (AFFH):

In the fall of 2017, the Los Angeles Housing + Community Investment Department (HCIDLA) and the Housing Authority of the City of Los Angeles (HACLA) completed and submitted Los Angeles’ first Assessment of Fair Housing (AFH) Plan. The AFH represents the full intent of the Fair Housing Act of 1968; the Act not only prohibited discrimination in housing on the basis of protected characteristics but also created a duty to affirmatively further fair housing through actions designed to overcome the legacy of segregation, unequal treatment, and the historic lack of access to opportunity in housing. The City of Los Angeles’ AFH Plan analyzes a variety of fair housing issues including, but not limited to, patterns of integration and segregation of members of protected classes; racially or ethnically concentrated areas of poverty within Los Angeles and regionally; publicly supported housing; and fair housing issues impacting persons with disabilities. As such, Los Angeles’ AFH Plan sets forth six major goals and various associated strategies for the City to implement over the next five years based on measurable metrics. In addition, the set of goals and strategies are accompanied by identifying key contributing factors (i.e., availability of affordable housing units in a range of sizes, displacement of residents due to economic pressures, lack of access to opportunity due to high housing costs, private discrimination, source of income discrimination, etc.).

The federal proposed rule that would make changes to the “public charge” policies goes against the City of L.A.’s commitment to ensure fair housing for its residents. As a direct recipient of federal Consolidated Plan program funds such as HOME, CDBG, HOPWA, and ESG, the HCIDLA has been required by HUD to certify its promise to affirmatively further fair housing to remain eligible to receive its entitlement funds for Los Angeles over the past many years. The proposed changes to the public charge policies threaten the City’s ability to continue protecting and enforcing housing rights for Los Angeles residents. All individuals despite their citizenship status are to be given the opportunity to fair and equal housing opportunities without fear of discrimination or outright refusal due to their immigrant status while seeking housing/housing assistance in this country, and most specifically, in Los Angeles. The proposed changes will potentially cause many residents to be denied affordable housing that is safe, clean, and accessible. These types of practices are completely contrary to how the City of Los Angeles serves its residents, and implements programs and policies through affordable housing funding mechanisms, legislative advocacy, and operational development. Currently, many immigrant residents encounter various forms of discrimination due to their extremely low, very low and low-income status in the City. The proposed changes to the public charge policies, if included, will only make it even more difficult for legal residents such as mothers with children, persons with disabilities, monolingual speaking households and other vulnerable and protected to rightfully seek housing assistance and/or avoid any type of discriminatory actions when seeking housing or while already housed in federally funded housing.
Housing Opportunities for Persons with HIV/AIDS (HOPWA)

HOPWA, a countywide, federal program managed by HCIDLA, aims to increase housing stability, expand access to care, and reduce the risk of homelessness for low-income individuals and families living with HIV/AIDS. Regionally-based offices provide front-line services to individuals at all levels of need, assisting clients with accessing services.

As far as the HOPWA program is concerned, the prospect of these new rules/regulations has created a growing sense of fear and a chilling effect for some clients. HOPWA service providers have provided anecdotal cases of clients asking about how future plans to seek citizenship are hampered by drawing down HOPWA benefits, especially rental assistance for which they currently qualify.

HOPWA service providers are reluctant to advise one way or the other, but are simply advising clients, to the best extent possible, based on what an expanded public charge analysis/review can mean for them in the near and long-term. HOPWA staff has also been in contact with its legal services contractor, Inner City Law Center, who has been tracking developments on this issue.

In addition to the chilling effect on pursuing Tenant Based Rental Assistance (which for HOPWA is directly linked to the Housing Choice Voucher/Section 8 program), there are still questions/unknowns about what is impacted or otherwise at stake. Specifically:

- It is unclear how or whether this rule intends to, or in practice, reaches back to past use of any of the programs invoked by this public charge analysis. On the one hand, this change discusses future use of various benefits programs, but a public charge analysis, in practice, can reach back as far as 36 months. As such, it is unclear if use of any of the programs in question, as far back as 2-3 years ago can impact clients that want to pursue citizenship.
- It is unclear what other benefits programs can be included. HOPWA provides the following benefits that, by implication, may be included, but not specifically called out: Short-Term Rental/Utility Assistance; Move-In and Security Deposit Grants and Scattered Site Master Leasing program (which provides sub-lessees a subsidized rent and supportive services)
- HOPWA also provides services to clients that draw down SSDI, among other benefits/cash assistance programs. This is not a benefit that is included, but it is unclear if still could be considered a factor once changes would be made to public charge rule.
Domestic Violence Shelter Operations (DVSO)

The DVSO program for the City of Los Angeles offers both emergency and transitional shelter services for survivors of Domestic Violence. Shelters provide confidential protection from a dangerous or life-threatening home environment. Emergency shelters provide refuge for 1-3 months, and transitional shelters provide up to 6+ months of safe housing.

Family Source Center (FSC)

FSCs provide core services to low-income families across the City, with the goal of increasing income and improving academic achievement for youth and adults. All 16 FSCs offer case management and other comprehensive services. The proposed rule changes, would in fact create a chilling effect to residents seeking to better their lives through the FSC provide services and counterproductive in achieving the key goals to attain self-sufficiency.

Impact to the Work of HCIDLA’s Commissions and Community Engagement (CCE)

The CCE unit is comprised of the Commission on the Status of Women, Commission on Community and Family Services, Human Relations Commission, Community Action Board, Affordable Housing Commission, and Transgender Advisory Committee. The Commissions include over 60 appointed commissioners representing a diverse pool of community leaders and subject experts. Together these bodies advise the City on host of equity issues that impact a cross-section of vulnerable populations across the City of Los Angeles.

Based on their role which involves interacting with and advocating for various communities, the commissions have directly expressed that a change to the public charge rule would further intensify inequity in Los Angeles. Namely, immigrants who are people of color, women, LGBTQ individuals, and those who are economically disadvantaged would be disproportionately impacted. For example, that there are immigrants among the population the Transgender Advisory Council serves in its Midnight Stroll program. This program could potentially dissuade or restrict these individuals, and their citizen relatives, from accessing key services. Similarly, over 7 in 10 single mothers in LA struggle to meet their basic needs, according to United Way of CA. Restricting access to programs like SNAP and CalFresh would stymie female immigrants with fear, forcing them to find alternative means of feeding their families. The proposed rule changes create a state of fear and that directly impact a significant percentage of the City’s population that would result in dire consequences.
November 14, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Department of Homeland Security
USCIS, Office of Policy and Strategy
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: Request for Public Comment on Proposed Regulation: “Inadmissibility on Public Charge Grounds” – DHS Docket No. USCIS-2010-002

Dear Ms. Samantha Deshommes,

The City of Los Angeles Human Relations Commission (HRC) respectfully submits the following comments in response to your Proposed Regulation: “Inadmissibility on Public Charge Grounds.”

The HRC stands with Mayor Eric Garcetti in embracing and celebrating our City’s 1.5 million immigrants and their many diverse and significant contributions to our society. In stark contrast to our mission of inclusivity, which demonstrably increases public engagement and public safety, the proposed measure promotes a culture of exclusivity and will lead to decreased trust and increased marginalization across a vast swath of Los Angeles’ and our country’s populations.

Further, it specifically targets applicants for residency: otherwise lawful immigrants who should be welcomed and placed on the path to citizenship in accordance with our nation’s laws, founding creed and values. Instead, this measure punishes the use of the most basic public benefits, and may even deter immigrants’ U.S. citizen children from using these benefits. This change would not stop people from being hungry, needing housing or being sick. Rather, it will only deter them from eating, being housed or obtaining care.

Deterring individuals on a legal path to citizenship from using critical services would make them and their families vulnerable to health and safety consequences and potentially impact all Americans by exacerbating existing homelessness and health crises. This measure is therefore not only a violation of immigrants’ basic human rights. It flies in the face of the founding principles of this country – life, liberty, and the pursuit of happiness.

The HRC is an unbiased City advisory board mandated to promote equal participation in the civic process through innovative peacebuilding programs, models, and policy recommendations designed to reduce discrimination, increase cultural competency, improve intergroup relations, and promote civil and human rights for all.
As such, the HRC works every day to build bridges between community and government, to promote trust, protect human rights, and foster a culture of inclusivity and acceptance. This proposal would have detrimental consequences in each of these realms.

Sincerely,

[Signature]

Courtney Morgan-Greene, President
On Behalf of The City of Los Angeles Human Relations Commission