Submitted via Regulations.gov

December 19, 2025

The Honorable Kristi Noem
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RE: DHS Docket No. USCIS-2025-0304, United States Citizenship and Immigration Services

Secretary Noem:

The American Association of People with Disabilities (AAPD) and the undersigned organizations write to express our strong opposition to the Public Charge Ground of Inadmissibility Notice of Proposed Rulemaking (NPRM). AAPD is a national disability-led and cross-disability rights organization that advocates for full civil rights for over 70 million Americans with disabilities. We accomplish this by promoting equal opportunities, economic empowerment, independent living, and political participation for disabled people.

AAPD strongly urges the Department of Homeland Security (DHS) to withdraw the proposed rule, which would remove the current well-grounded regulations on public charge without replacing them. Most notably, it would replace the current clear guidelines with a void of information about what programs can and cannot be considered in a public charge assessment. Such a void invites discrimination against people with disabilities and their families.

The NPRM would remove the clarity the current regulations provide on which public benefits can be considered in the public charge assessment. It suggests that the Administration proposes to consider any type of public benefits received or applied for by noncitizens at any time and for any duration, even on behalf of U.S. citizen or lawful permanent resident (LPR) family members, as relevant to the public charge determination.

The NPRM also seems to envision that the agency may expand scrutiny of individuals to include their family members. The rule removes the section that explicitly states that applying for or receiving benefits on behalf of family members is not considered "receipt." This will have a significant chilling effect, reducing the legitimate and necessary use of benefits by U.S. citizens and LPR adults and children with disabilities.

Furthermore, this rule would discourage immigrants who have or who are in the process of receiving temporary or permanent status from accessing the services and supports they need, out of fear of not being able to renew or update their immigration status. No one should be denied the opportunity to survive, thrive, or live safely because they have a disability or need to use public benefits.

Needing financial assistance or accessing public benefit programs should not be used to deny someone's application to come to the United States on the basis that they will be a "burden to the state" because of the likelihood that the individual or their family member may one day rely on public benefits. There are millions of working disabled adults who rely on Medicaid[1], and there are millions of working parents whose disabled children rely on publicly funded special education services. Disabled people who rely on public benefits who do not work, whether as a result of their disability or as a result of the restrictions of the programs they need to survive, still contribute greatly to their families, their communities, and to this nation in a myriad of ways.

Many immigrants with disabilities come to the U.S. specifically to access medical care, technology, or supports that are unavailable in their home countries. Restricting their ability to enter the U.S. or adjust their immigration status once they are in the U.S. prevents them from gaining opportunities to live safely, receive treatment, and pursue options that allow them to lead healthy and independent lives. Denying individuals the opportunity to enjoy American liberties and opportunities based on a subjective perception that an individual may need public benefits is antithetical to our nation's motto, "E Pluribus Unum," or, "out of many, one."

The proposal invites discrimination against people with disabilities and their families

The proposed rule would remove the current public charge standards with no replacement. Such a lack of guidance invites discrimination against people with disabilities based on stereotypes or generalizations about their ability to work and their potential likelihood of receiving public benefits.

Longstanding stereotypes about people with disabilities paint them as recipients of charity who are unable to work. Without guidance, immigration officers, who are not experts in disability or public benefits, are likely to rely on stereotypes and generalizations that people with disabilities are most likely to rely on public benefits, regardless of their actual circumstances. In fact, such assumptions are found in the preamble of the proposed rule itself.

In the discussion of the proposed removal of definition for "likely at any time to become a public charge" the Department references a disability as a negative factor in the determination, stating that determinations "favor a nuanced approach but generally

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[1] Jennifer Tolbert, Sammy Cervantes, Robin Rudowitz, and Alice Burns. *Understanding the Intersection of Medicaid and Work: An Update*. KFF, 2025. https://www.kff.org/medicaid/understanding-the-intersection-of-medicaid-and-work-an-update/

recognize that a healthy individual of working age with no significant health conditions or disabilities…is unlikely to be inadmissible as likely at any time to become a public charge."[2] The Department provides no examples of when a person with a disability would be admissible and determined unlikely to become a public charge.

In addition, the Department proposes to remove section 212.22(a)(4), which expressly precludes an officer from relying solely on an individual's disability to make a public charge determination. The Department's reasoning is that they are already covered by Section 504 of the Rehabilitation Act of 1973, so the section is unnecessary.

In Section 504, Congress prohibited discrimination based solely on disability in any program or activity conducted by an executive branch agency. It also required each agency to develop regulations to implement the section in its own operations and the programs and activities funded by the agency. While it is true that Section 504 continues to prohibit discrimination by immigration officers, it is essential to reiterate the prohibition on disability discrimination in the context of immigration. Without such reiteration, immigration officers may be misled into believing the public charge rule supersedes Section 504 when, in fact, the two rules must be applied consistently.

The Department states that "in the context of any disability, officers would comply with the existing law and consider whether or to what extent a disability is likely to impact an alien's ability to be self-sufficient, ensuring that disability is not used as the sole determinant of an alien's likelihood at any time of becoming a public charge."[3] However, without any specific guidance to officers or written policies available to commenters, such promises mean little. Moreover, in the absence of the reminder that disability discrimination is prohibited, immigration officers' determinations will be subject to uncertainty and legal actions that could be avoided by retaining the current regulation.

The Department has said that it will develop policy in the future, but no such policy exists right now or is available to commenters. The Department does not even state that it will describe protections against disability discrimination in these future policy documents.

Throughout the NPRM the Department also uses multiple terms, none of which are defined, to describe the programs that US Citizen and Immigration Services officials will be allowed to consider in a public charge assessment. This uncertainty essentially provides immigration officers with unbounded discretion to determine which factors are relevant in making the public charge assessment. The NPRM goes so far as to state that such discretion is "the primary source of unquantified benefits of this proposed rule."[4]

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[2] 2025 NPRM https://www.federalregister.gov/d/2025-20278/p-322
[3] 2025 NPRM https://www.federalregister.gov/d/2025-20278/p-344
[4] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-114

The proposed rule fails to make any case for why the unfettered discretion of immigration officers is so essential as to justify the high risk of discrimination in public charge assessments.

The proposed rule opens door to consideration of benefits used by family members, including US citizen children, and to use of any public benefit

One in four children in the U.S. have at least one immigrant parent. Most of these children are U.S. citizens, either in mixed-immigration status households or with naturalized citizen parents. Only about three percent of children in the U.S. are themselves noncitizens.[5]

The proposed rule appears to leave room for officers to consider benefits used by family members who are not seeking to adjust their status. The rule removes the definition of "receipt (of public benefits)" (8 CFR Part 212.21(d)) that explicitly states that applying for or receiving benefits on behalf of family members is not considered "receipt." It also fails to provide such reassurance in the preamble, as the 2019 final rule did.[6]

Without that clear language, it is impossible for immigrants to know - or for providers to offer them meaningful reassurance about - whether use of benefits by family members, including U.S. citizen children, will harm them when they seek to obtain LPRstatus.

The proposed rule also includes an economic impact analysis, which predicts that approximately 447,000 people will disenroll or forgo enrollment in SNAP, 364,000 in Medicaid, 64,000 in Supplemental Security Income (SSI), 59,000 in CHIP and 16,000 in cash assistance under Temporary Assistance for Needy Families (TANF).[7] The Department admits that those who disenroll or forgo enrollment will include "U.S. citizens who are members of mixed-status households." The predicted reduction in SSI enrollment shows that the Department specifically expects disabled adults and children, including disabled U.S. citizen children, to forgo supports specifically designed for them.

There are a vast number of programs and services that an immigration official might decide fall under the heading of a "public benefit" or "public resource," including many not limited to low-income people or individuals with disabilities. Such examples include Individual Assistance dollars from the Federal Emergency Management Agency in the wake of a natural disaster or public education generally. It is beyond imagination that DHS intends that *all* of these benefits should count in the public charge determination. But the proposed rule does not provide any guidance about which programs would *not* be considered; indeed, it explicitly rejects the concept of doing so. By contrast, the 2019

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[5] Drishti Pillai, Akash Pillai, and Samantha Artiga. *Children of Immigrants: Key Facts on Health Coverage and Care*. KFF, 2025. https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/.

[6] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-499. Of note, the 2019 final rule discussed this reassurance in the context of arguing that the rule could not be considered to discriminate against certain citizen children on the basis of their parents' nationality, as their receipt of benefits would not be considered in the public charge assessment.

[7] 2025 Final Rule, Table VI.10, https://www.federalregister.gov/d/2025-20278/page-52214

final rule included statements such as “this definition does not include benefits related exclusively to emergency response, immunization, education, or social services”[8] and “DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance.”[9]

Without clear guidance, states, local governments, and community organizations that help families enroll in benefits would be unable to provide definitive reassurance to immigrants and their family members that these programs were safe to use. Refusing to articulate *which benefits* will count both has enormous chilling effects and leaves an excessive amount to the discretion of individual immigration officers, who are not experts in public benefits and cannot reasonably be expected to understand the details of hundreds (or thousands) of programs.

Even if it were clear that only “means-tested public benefit” programs would be considered, it would still be unclear exactly which programs DHS would consider. It might be plausible to guess that the Department is thinking of the programs covered as “Federal means-tested public benefits” under Personal Responsibility and Work Opportunity Act, but DHS does not say so explicitly.

Without guardrails, immigration officials would be free to imagine and apply their own definitions of “means-tested benefits,” allowing any number of programs to be counted, including early intervention and special education services guaranteed to all children with disabilities by the Individuals with Disabilities Education Act (IDEA).

Receipt of public benefits by a disabled person does not mean that the individual is not “self-supporting”

Disabled people who rely on public benefits who do not work, whether as a result of their disability or as a result of the restrictions of the programs they need to survive, still contribute greatly to their families, their communities, and to this nation in a myriad of ways. Further, we recognize that no one is truly self-supporting - everyone relies upon family, friends and other community members to meet their needs and achieve their goals.

However, within the proposed rule, the Department fails to recognize that many benefits available in the US do not draw such a stark distinction between not relying on public benefits and being “incapable of earning a livelihood.” Especially in disability services, many middle-income families have access to programs due to a family member with a disability that they would not otherwise qualify for based on income.

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[8] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-522.
[9] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-527

For example, the Medicaid Buy-In program was designed by Congress specifically for working adults with disabilities. It provides access to supports like personal care services that people with disabilities use for daily living, including to get to work. The very point of these supports is that their provision ensures individuals with disabilities are capable of earning a livelihood. In another example from Medicaid, many home and community-based services waivers are for middle income families to support their children with disabilities, even if no other family member is eligible. Finally, special education offered under IDEA is available to any child with a disability that qualifies, regardless of income. For officers to make determinations of a likelihood to become a public charge based on use of these Medicaid and education services, as just two examples of public benefits programs wherein many recipients still work and contribute their communities, would contradict the will of Congress, as described by the Department, and include families who are "self-supporting" through work.

As discussed above, the proposed rule lacks guidance or guardrails on which benefits may be considered in a public charge determination, opening up the determination to include nearly any publicly funded program.

According to the Department, the purpose of the proposed changes is to "allow officers to focus on Congress' unequivocal policy goal that aliens not depend on public resources to meet their needs" and then goes on to describe "an alien who is incapable of earning a livelihood" as being generally inadmissible as a likely public charge.

Not all of those who receive public benefits are disabled, or are unable or unwilling to work. In fact, a 2020 report from the Government Accountability Office (GAO) found that 70% of working age adults receiving benefits like Medicaid or SNAP work full-time (defined as working at least 35 hours a week)[10]. These individuals are working, and yet still need public benefits to help them meet their basic needs, often due to low wages and rising costs for food, housing, and energy.

Furthermore, this rule could have a chilling effect of discouraging immigrants who have, or who are in the process of receiving, temporary or permanent status from accessing the services and supports they need, out of fear of not being able to renew or update their immigration status. One estimate notes that the chilling effect of this rule could lead to anywhere between a disenrollment rate ranging from 10% to 30% within publicly funded healthcare programs, meaning that from between 1.3 million to 4.0 million people could disenroll from Medicaid or the Children's Health Insurance Program, including nearly 600,000 to about 1.8 million citizen children. These disenrollments will lead to less access to healthcare, higher rates of disability and illness, and increases in uncompensated caregiving and direct support work that will have negative consequences for our nation's overall workforce participation rate[11]. An individual could

[10] Federal Social Safety Net Programs: Millions of Full-Time Workers Rely on Federal Healthcare and Food Assistance Programs: https://www.gao.gov/products/gao-21-45#:~:text=Fast%20Facts,hours%20annually%20(see%20figure).

[11] Samantha Artiga, Drishti Pillai, Sammy Cervantes, Akash Pillai, and Matthew Rae. Potential "Chilling Effects" of Public Charge Other Immigration Policies on Medicaid and CHIP Enrollment. KFF, 2025.

find themselves with an illness, disability, or other unforeseen circumstances after they have immigrated to the United States that necessitates the use of public benefits to meet their needs. No immigrant should fear that their status could be in jeopardy simply because they receive public benefits or could need to access those benefits in the future.

The proposal refers to future policymaking without providing detail or opportunity for public comment

The Department states that it will, following the finalization of the proposed rule, "formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien's circumstances, that are consistent with the statute and congressional intent, and comply with past precedent."[12] But the policy and tools are not provided now, and the rule provides no indication that the Department intends to submit them to public comment and review. The proposal also provides no assurance that the policy and tools will provide information on how the Department will meet its requirements under Section 504 of the Rehabilitation Act in public charge determinations.

Any guidance or tools that are created to direct officers' legal decisions should be made available for notice and comment because of their significant impact on the rights of applicants, including protections against disability-based discrimination.[13]

The proposed rule asserts that "removing the current regulations would provide DHS greater flexibility to adapt to changing circumstances," such as the legislative changes that recently occurred under H.R. 1.[14] However, the benefit of flexibility does not outweigh the harm that will be caused by unclarity. Eliminating important regulatory boundaries, particularly when those boundaries are required by federal law, is not the answer to new statutory requirements.

The Department is not ready to move forward if it has not yet produced these policy documents. The Department should withdraw this rule.

We appreciate the opportunity to comment on this important rulemaking. For more information, contact Michael Lewis at mlewis@aapd.com.

Sincerely,

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https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/

[12] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-105

[13] Administrative Conference of the United States. *Interpretive Rules of General Applicability and Statements of General Policy*. Recommendation 76-5. n.d. Accessed November 25, 2025. https://www.acus.gov/sites/default/files/documents/76-5.pdf

[14] 2025 NPRM, https://www.federalregister.gov/d/2025-20278/p-287

American Association of People with Disabilities

Able South Carolina

Access Living

Access Ready, Inc.

ADA Watch/Coalition for Disability Rights & Justice

ADAPT Montana

Alliance Center for Independence

American Association on Health and Disability

American Network of Community Options and Resources (ANCOR)

Association of Programs for Rural Independent Living (APRIL)

Autistic People of Color Fund

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

Boston Center for Independent Living

Buen Vecino

Building Healthy Communities- Health4Kern

Care in Action

Caring Across Generations

Caring Across Generations

Center for Medicare Advocacy

Center for Public Representation

CenterLink

Coalition on Human Needs

Colorado Cross-Disability Coalition

CommunicationFIRST

Community Catalyst

Courage California

Deaf Equality

Detroit Disability Power

Disability Culture Lab

Disability Policy Consortion

Disability Rights California

Disability Rights Education and Defense Fund

Disability Social History Project

Diverse Elders Coalition

ENDEPENDENCE CENTER OF NORTHERN VIRGINIA (ECNV)

Epilepsy Foundation of America

Hand in Hand: The Domestic Employers Network

Hispanic and Immigrant Center of Alabama

Stephanie Hydal, George Washington University

Justice in Aging

Lakeshore Foundation

Little Lobbyists

Little People of America

Living Fully at Home

Muscular Dystrophy Association

National Association of Councils on Developmental Disabilities

National Coalition for Mental Health Recovery

National Council of Jewish Women

National Council on Independent Living

National Disability Rights Network (NDRN)

National Disabled Legal Professionals Association

National Domestic Workers Alliance

National Down Syndrome Congress

National LGBTQ Task Force Action Fund

National Organization for Women

National Organization of Nurses with Disabilities

NBJC

Network of Occupational Therapy Practitioners with Disabilities and Supporters (NOTPD)

New Disabled South

ORALE

OT Leaders and Legacies Society

PFLAG National

PHI

Raizes Collective

San Diego Immigrant Rights Consortium (SDIRC)

Service Employees International Union

Synergies Work

TASH

TDIforAccess

The Julian Way

The Partnership for Inclusive Disaster Strategies

Touch the Future Inc

United Spinal Association

UNSEEN Documentary LLC

World Institute on Disability