



December 10, 2018

Samantha Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
United States Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Re: DHS Docket No. USCIS-2010-0012

Dear Ms. Deshombres:

The National Federation of the Blind (NFB) appreciates the opportunity to comment on the administration's Notice of Proposed Rulemaking (NPRM) regarding updates to the definition of "public charge" and related terms. The National Federation of the Blind is the leading organization of blind individuals in the United States, consisting of over fifty thousand members, fifty-two affiliates across the country, including the District of Columbia and Puerto Rico, and over seven hundred local chapters.¹ The mission of the National Federation of the Blind is to eliminate the societal, economic, and educational barriers which inhibit blind individuals from living the lives we want. Our collective experience has taught us that blindness is not the characteristic that defines us or our futures; rather, it is low societal expectations regarding the capacity of blind individuals that create obstacles between us and our dreams. As a nationwide membership driven organization, and consistent with our organizational diversity statement, we are interested in securing and expanding opportunities for all blind individuals in the United States, irrespective of race, creed, color, religion, gender identity and expression, sexual orientation, nationality, marital status, age, disability, or any other characteristic or intersectionality of characteristics.²

The changes being proposed by the administration to the definition of "public charge" will have far-reaching consequences for a subsection of our membership that will affect their economic security, access to healthcare, housing stability, educational opportunities, and overall quality of life. The Department of Homeland Security, hereinafter the "Department," reasons that these updates are necessary to ensure that "applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient, i.e. do not depend on public resources to meet their needs."³ This statement fails to acknowledge the myriad of situations which require blind and otherwise disabled immigrants and their families from needing to access such services. For these reasons, the National Federation of the Blind opposes the changes being proposed by the administration, and we strongly urge the Department to withdraw this NPRM in its entirety. Alternatively, we urge the Department to consider the unique factors that blind and other individuals with disabilities confront as a direct result of their disability when reviewing their applications for immigration relief.

There are an estimated 7,675,600 blind individuals in the United States, comprising 2.4 percent of the total population.⁴ Of this number, 3,942,200 are adults between ages eighteen through sixty-four, and among this group, the unemployment rate hovers at a staggering 70.5 percent.⁵ As a result, many blind individuals in the United States rely on one or more sources of support now being defined as a “public benefit” described in the NPRM. The proposed changes by the new 8 C.F.R. § 212 would be particularly detrimental to undocumented blind parent(s) of blind child(ren), as well as mixed status families with either blind parent(s), child(ren), or both.

As currently drafted, the proposed regulatory changes would penalize blind undocumented parent(s) and their child(ren) by requiring the parent(s) to decide whether to apply for benefit(s) that her child(ren) are eligible for at the risk of eliminating her chances of adjusting her immigration status,⁶ or risk going without the necessary supports such as Social Security Supplemental Insurance (SSI), housing assistance e.g. Section 8 Project-Based Rental Assistance, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), or other cash/means-tested benefits that would improve her child(ren)’s quality of life.⁷ More alarming, however, is the administration’s proposal to expand the “public benefit” definition to include “Non-cash benefits that cannot be monetized,” such as benefits paid for by Medicaid (with certain exceptions), as well as premium and cost sharing subsidies under Medicare Part D.⁸

The significant departure from previous approaches to “public charge” by the Department’s NPRM cannot be understated. In addition to expanding the definitions of public charge and related terms, the proposed rule now applies negative weight to various factors that blind and otherwise disabled immigrants confront as a direct result of their immigration status. For example, the Department proposes adding the Children’s Health Insurance Program (CHIP) to the list of items that qualify as a “public benefit” under the newly proposed 8 C.F.R. § 212.21(b), while simultaneously acknowledging that “that this program does not involve the same level of expenditure as most of the other programs listed in this proposed rule, and that noncitizen participation in these programs is currently relatively low.”⁹ Nevertheless, the Department justifies this addition by arguing that “because these benefits relate to a basic living need (i.e., medical care), receipt of these benefits suggests a lack of self-sufficiency.”¹⁰

Given the previously discussed statistics of unemployment and underemployment among blind individuals in the United States, it is difficult for us to understand why the Department aims to add a program that is, by the Department’s own admission, of relatively low-cost to the government. This addition would have a significant impact on mixed-status families, where the blind parent(s) might be undocumented with child(ren) who are not. With 706,400 blind children in the United States,¹¹ some of whom benefit from CHIP, and are part of mixed-status families, the National Federation of the Blind opposes the addition of the Children’s Health Insurance Program to the expanded definition of “public benefit.”

Additionally, the Department seeks to weigh the applicant's age against the likelihood that the applicant will become a "public charge." Although the age requirement is not new to the immigration process, the Department aims to expand the amount of consideration it will give to this component under the proposed rule. The Department states that an individual's "age is a mandatory factor that must be considered" when determining whether an individual "is likely to become a public charge in the future."¹² The Department elaborates on its reasoning by stating that "a person's age may impact his or her ability to legally or physically work and is therefore relevant to being self-sufficient, and the likelihood of becoming a public charge. Accordingly, DHS proposes to consider the alien's age primarily in relation to employment or employability, and secondarily to other factors as relevant to determining whether someone is likely to become a public charge."¹³

Specifically, DHS proposes to assess whether the alien is between eighteen and the minimum "early retirement age," sixty-one as of 2017, for Social Security purposes, and whether the alien's age otherwise makes the alien more or less likely to become a public charge, such as by impacting the alien's ability to work. DHS would consider a person's age between eighteen and sixty-one as a positive factor in the totality of the circumstances, and consider a person's age under eighteen or over sixty-one to be a negative factor in the totality of the circumstances when determining the likelihood of becoming a public charge."¹⁴ This expanded focus on the age requirement neglects to recognize the varying needs which drive blind parent(s) and families of blind child(ren) to seek immigration relief in the United States. By applying negative weight to an applicant's age, particularly that of applicants under age eighteen, will inevitably rule out immigration relief for blind children. Given that, by the very nature of being blind, the Department will be predisposed to consider them a "public charge."

Further exacerbating the impact of the totality of all of these changes, the Department provides a definition for the term "likely at any time to become a public charge" which raises red flags for our organization.¹⁵ The Department proposes defining this term as "likely at any time in the future to receive one or more public benefits, as defined in 8 C.F.R. § 212.21(b), based on the totality of the alien's circumstances."¹⁶

Given that a subsection of our membership has and will aim to adjust their immigration status, and that by the nature of being blind individuals, have and will continue to face the artificial barriers to education and employment that all blind individuals in the United States confront, irrespective of immigration status, and that in order to tackle such artificial barriers, we have found that it is necessary for blind individuals to become proficient in Braille, access technology, independent living skills, as well as orientation and mobility; specialized skills that are often taught to blind adults at blindness rehabilitation training centers;¹⁷ and training which is often funded through federal and state tax dollars through state vocational rehabilitation agencies. Moreover, with an unemployment rate of over 70 percent, many blind individuals rely on public assistance to make ends meet. The proposed definition of the term "likely at any time to become a public charge" exhibits a clear and inherent bias against blind and other individuals with disabilities.¹⁸ We strongly urge the Department to abandon this one-sided approach.

Finally, the National Federation of the Blind opposes the Department's proposal to negatively weigh a family's income which falls below 125 percent of the Federal Poverty Guidelines (FPG).¹⁹ For a family of four, that equals an annual income of \$25,100.²⁰ Given the previously discussed barriers to employment and education that all blind people in the United States confront, coupled with the high unemployment rate among the blind, this proposal adds an additional penalty against blind and disabled immigrants and their families.

Viewed as a whole, these proposed changes will adversely impact blind individuals seeking immigration relief. As currently drafted, the Department's proposal possesses clear and inherent biases against blind and disabled immigrants; thus, the National Federation of the Blind opposes these changes and we urge the Department to withdraw this NPRM in its entirety. Alternatively, we urge the Department to consider the unique circumstances that blind and otherwise disabled individuals face, as a direct result of their disability, and positively weigh these considerations when reviewing their applications. Otherwise, blind individuals will be at a disadvantage from the outset solely on the basis of their disability.

The National Federation of the Blind is a recognized expert in the field of blindness, and we stand ready to advise the Department on ways it can better evaluate the impact that a blind individual seeking immigration relief would positively contribute to the fabric of the United States. The proposed rule, as drafted, misses that mark. Please do not hesitate to contact me if we can be of further assistance.

Sincerely,



Mark A. Riccobono, President
National Federation of the Blind

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¹ See NATIONAL FEDERATION OF THE BLIND, <https://nfb.org/about-the-nfb> (last visited December 4, 2018).

² *Diversity Statement*, NATIONAL FEDERATION OF THE BLIND, <https://nfb.org/diversity-statement> (last visited December 4, 2018).

³ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) to be codified 8 C.F.R. pt. 212.

⁴ Erickson, W., Lee, C., von Schrader, S., CORNELL UNIVERSITY YANG-TAN INSTITUTE, www.disabilitystatistics.org (last visited December 4, 2018) (*citing* Disability Statistics from the American Community Survey).

⁵ *Id.*

⁶ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51157 (proposed Oct. 10, 2018) to be codified 8 C.F.R. pt. 212.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 51173

¹¹ Erickson, W., Lee, C., von Schrader, S., CORNELL UNIVERSITY YANG-TAN INSTITUTE, www.disabilitystatistics.org (last visited December 4, 2018) (citing Disability Statistics from the American Community Survey).

¹² *Id.* at 51179 – 51181

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 51173.

¹⁷ See LOUISIANA CENTER FOR THE BLIND, <http://www.louisianacenter.org/> (last visited December 4, 2018); COLORADO CENTER FOR THE BLIND <https://cocenter.org/> (last visited December 4, 2018); BLINDINC <https://www.blindinc.org/> (last visited December 4, 2018)

¹⁸ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed Oct. 10, 2018) to be codified 8 C.F.R. pt. 212.

¹⁹ *Id.* at 51175.

²⁰ Annual Update of the HHS Federal Poverty Guidelines, 83 Fed. Reg. 2642 (published Jan. 18, 2018).