NIWAP

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

The Impact of the 2020 Public Charge Rule on Transitional Housing

By Rafaela Rodrigues and Leslye E. Orloff

October 12, 2020

The Department of Homeland Security issued a new rule relating to the "public charge" ground of inadmissibility, which went into effect on February 24, 2020.[1] The 2020 public charge rules have raised a number of questions among advocates and attorneys working with immigrant victims of domestic violence, sexual assault, stalking and dating violence. This publication will discuss why immigrant victims' access to transitional housing and emergency shelter do not create issues with the public charge ground of inadmissibility. It will discuss the definition of public charge, the types of programs and services that fall within the "public benefits" definition under the 2020 public charge rule and federal statutes, and how transitional housing does not fall within the definition of public benefits. It is crucial that victim advocates, attorneys, police, prosecutors, courts and other service providers working with immigrant victims are able to accurately identify who may be affected by the 2020 public charge rule and which public benefits are included in the 2020 regulation's definition of public charge.

Housing is a primary concern for most women living with violence as it directly affects the victim's ability to leave an abusive relationship, work setting, or a home where sexual assault or stalking occurred.[2] Therefore, access to emergency shelter and transitional housing is often a critical service for survivors of violence. It provides a safe haven necessary for battered immigrants and immigrant crime victims to successfully leave abusive homes and workplaces where they have suffered sexual assault, human trafficking, and other criminal activities perpetrated by their employer or human traffickers.[3]

The 2020 public charge rule does not affect many immigrant victims, particularly including immigrant crime victims that have applied for or been granted immigration relief under the Violence Against Women Act (VAWA),[4] U-visa, or T-visa programs. The rule also does not

---

[1] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41505 (Aug. 14, 2019), https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds

[2] Meaghan Fitzpatrick et al., *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP 2 (Jun. 3, 2014), http://library.niwap.org/wp-content/uploads/2015/pdf/PB-Tkit-TransitionalHousingReport-06.03.14.pdf.

[3] Meaghan Fitzpatrick et al., *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP (Jun. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/access-shelters-housing. *See* Miguel Morales and Leslye E. Orloff, *Fact Sheet: Immigrant Access to Emergency Shelter and Transitional Housing*, NIWAP (Oct. 23, 2016) http://niwaplibrary.wcl.american.edu/pubs/shelter-trans-housing-advocacy-steps

[4] This publication will use the terms "VAWA" and "VAWA self-petitioner" or "VAWA self-petition" interchangeably to refer to the full range of VAWA immigration relief designed to help immigrant victims of domestic violence, child abuse and elder abuse including: VAWA self-petition, VAWA cancellation or removal, VAWA suspension of deportation, battered spouse waiver, VAWA Cuban Adjustment Act self-petition for lawful permanent residency (VAWA CAA), VAWA Nicaraguan and Central American Relief Act suspension of deportation (VAWA NACARA) and VAWA Haitian Refugee and Immigration Fairness Act self-petition (VAWA HRIFA). *See* VAWA Self-Petitioners Comparison Charts & Interlineated Statutes: VAWA NACARA (Nicaraguan and Central American Relief Act), VAWA HRIFA (Haitian Refugee Immigration Fairness Act), and VAWA CAA (Cuban Adjustment Act) (April 22, 2020) http://niwaplibrary.wcl.american.edu/vawa-comparison-interlineated-

affect victims who are seeking or have been granted asylum, refugee status, or special immigrant juvenile status (SIJS).

Additionally, domestic violence, sexual abuse, stalking, dating violence and human trafficking victims — regardless their immigration status — are eligible to access emergency shelters and transitional housing and receiving help from these programs cannot be considered in public charge determinations. Federal statutes and the 2020 public charge rule do not include the immigrant's access to short-term housing including transitional housing and emergency shelter in the programs considered when public charge determinations are made because these forms of housing are excluded from the definition of federal and state "public benefits" under federal laws and regulations.

Short-term shelter is a program that is necessary to protect life and safety and is available to help all persons in need of such services without regard to immigration status.[5] Short-term shelter includes emergency shelters and transitional housing for the homeless and for victims of domestic violence, stalking, sexual assault, dating violence, human trafficking, victims of U visa listed criminal activities, and for children who have been abused, abandoned, or who are runaways.[6]

I. What is "Public Charge"?

Public charge is ground of inadmissibility under Immigration and Nationality Act (INA § 212) that can prevent an otherwise eligible immigrant from being granted an immigration benefit. Grounds of inadmissibility apply only at the time of admission, which is:[7]

- When an immigrant applies to legally enter the U.S. (entry);[8]
- When an immigrant applies to become a lawful permanent resident;[9] or

---

statutes-ncara-hrifa-caa (For charts describing who qualifies and comparing these programs for immigrant victims subjected to battering or extreme cruelty by their spouse, parent or adult child who is a U.S. citizen or their spouse or parent who is a lawful permanent resident.)

[5] Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation (A.G. Order No. 2353-2001), 66 Fed. Reg. 3613 (Dep't of Justice Jan. 16, 2001) (Hereinafter "AG Order on Life and Safety Services"), available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestrictedbenefits/AG_order.protection_life_or_safety.pdf.

[6] Letter from Andrew Cuomo, Secretary, Dep't of Housing and Urban Development, to HUD Funds Recipients 2 (Jan. 19, 2001) (Hereinafter "HUD Letter 2001"), http://niwaplibrary.wcl.american.edu/publicbenefits/housing/HUD-shelter-transitional-housing.pdf/view (Immigrant victims of sexual assault receive access to emergency and transitional housing if they are homeless or at risk of homelessness. Immigrant victims of human trafficking, based on the facts of their particular case, gain access based on the HUD letter 2001 and/or under Section 107 of the Trafficking Victims Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 § 107 (codified at 22 U.S.C. § 7105(b)(1)(A) (hereinafter "TVPA 2000")).

[7] 8 CFR § 212.20.

[8] This includes immigrants applying for entry at airports, borders or other locations outside of the United States and includes applications for visas and forms of humanitarian relief, which are considered requests for legal entry into the U.S. filed by persons already present in the United States.

[9] The process of applying for lawful permanent residency is referred to in immigration law as applying for "adjustment of status" to lawful permanent residency (LPR).

- When a lawful permanent resident leaves the U.S. for more than 180 consecutive days and later seeks to reenter the United States.[10]

Grounds of inadmissibility do not apply when a lawful permanent resident is applying to become a U.S. citizen through naturalization.[11]

Under the 2020 final public charge rule, "public charge" means an immigrant who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period [12] (such that, for instance, receipt of two benefits in one month counts as two months).[13] The 2020 rule applies to a person who is "likely at any time to become a public charge" which means, more likely than not at any time in the future to become a public charge, based on the totality of the alien's circumstances.[14]

II. VAWA Self-Petitioners, U and T Visa Applicants and Other Categories of Immigrant Victims Exempt from Public Charge Under the 2020 Rule

Many immigrant applicants and recipients of crime victims related forms of immigration relief, immigrants applying for and receiving certain forms of humanitarian relief, and lawful permanent residents have been statutorily exempt from the public charge ground of inadmissibility. Congress had decided by statute which immigrants are exempt from public charge inadmissibility determinations. Under both federal statutes and the 2020 public charge rule the following categories of immigrants are exempt from the public charge ground of inadmissibility:

- Refugees[15] and asylees;[16]
- VAWA self-petitioners;[17]
- U visa;[18]

---

[10] Erin Quinn and Melissa Rodgers, ILRC, Public Charge and Naturalization, 3 (Sep. 2019), https://www.ilrc.org/sites/default/files/resources/public_charge_and_natz_practice_advisory_092019.pdf.

[11] Erin Quinn and Melissa Rodgers, ILRC, Public Charge and Naturalization, 4 (Sep. 2019), https://www.ilrc.org/sites/default/files/resources/public_charge_and_natz_practice_advisory_092019.pdf (Except if a naturalization applicant traveled for more than 180 consecutive days and was admitted back into the U.S., but was in fact inadmissible at the time they returned due to any ground of inadmissibility including public charge, the fact of entering when inadmissible could make the immigrant subject to removal. This could come up during the naturalization process.)

[12] 8 CFR § 212.21.

[13] The applicant's receipt of two non-monetized benefits in the same month, such as public housing and Medicaid, will count as two months. This means an individual could potentially reach the 12-month threshold in as little as 3-4 months depending on the number of programs they are enrolled in. *See* National Housing Law Program, Trump Administration's "Public Charge" Rule (Feb. 24, 2020) https://www.nhlp.org/wp-content/uploads/2020.02.26_-NHLP-Public-Charge-Technical-Fact-Sheet_Final-New-Effective-Date_IL-Injunction_UPDATED.pdf

[14] 8 C.F.R. § 212.21(c)

[15] 8 C.F.R. § 212.23(a)(1); INA § 207

[16] 8 C.F.R. § 212.23(a)(2); 209

[17] 8 C.F.R. § 212.23(a)(20); INA § 212(a)(4)(E)(i) (Applies to victims who have applied for and who have been granted VAWA self-petitions, VAWA CAA, VAWA HRIFA, and VAWA NACARA.)

[18] 8 C.F.R. § 212.23(a)(19); 101(a)(15)(U)

- T visa;[19]
- Special Immigrant Juvenile Status (SIJS);[20]
- Certain Visa holders;[21]
- Deferred Action for Childhood Arrivals (DACA) applicants;[22]
- Other categories of exempt immigrants (Amerasians; Afghan and Iraqi military translators; certain Cuban and Haitian adjustment applicants; certain Nicaraguans and Central Americans under NACARA; Registry applicants; Soviet and Southeast Asian Lautenberg parolees);[23] and
- The majority of permanent residents.[24]

United States Citizenship and Immigration Services (USCIS) officials adjudicating admission, reentry or lawful permanent residency cannot address public charge without first determining whether federal statutes exempt the immigrant from the public charge ground of inadmissibility. For exempt immigrants, public charge determinations cannot be made with respect to any decision related to the immigrant's exempt immigration case.

For immigrants who are not exempt, to determine inadmissibility based on the public charge ground, the USCIS adjudicating officers will review the totality of an immigrant's circumstances when deciding whether an applicant is likely at any time to become a public charge. The USCIS officer will weight a number of factors, positive and negative, and must consider applicants':

- Age[25]

---

[19] 8 C.F.R. § 212.23(a)(17); INA § 101(a)(15)(T)
[20] 8 C.F.R. § 212.23(a)(10); 245(h)
[21] 8 C.F.R. § 212.23(a)(11)-(16) (Aliens seeking registry; Applicants seeking Temporary Protected Status; Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or other Foreign Government Official or Employee, or Immediate Family; An alien in transit to U.N. Headquarters or foreign government official; Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories; NATO representatives.)
[22] DACA applicants are not subject to a public charge test when they apply for DACA status, but they are not statutorily exempt from public charge. As a result when a person with DACA status gains a path to lawful permanent residency whether or not the DACA recipient is exempt from public charge will depend on the form of immigration relief the DACA recipient is receiving. For example, DACA recipients filing VAWA self-petitions or for SIJS based on child abuse will be exempt and DACA recipients applying for lawful permanent residency as a child of a lawful permanent residency will not be exempt. *See* USCIS, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, (June 15, 2012), available at https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf. *See also* Em Puhl and Sarah Lakhani, *Public Charge Exemptions and Considerations*, ILRC (Dec. 2019) https://www.ilrc.org/sites/default/files/resources/public_charge_exemptions_considerations_final.pdf
[23] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,504-05 (Aug. 14, 2019)
[24] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,465 (Aug. 14, 2019) ("To be clear aliens who are already lawful permanent residents of the United States are not applying for adjustment of status, extension of stay, or change of status, and therefore generally, will not be directly affected by the rule."). Lawful permanent residents who leave the U.S. for more than 180 days and then later seek permission to be admitted so that they can reenter the United States may be subjected to a public charge inadmissibility determination in order to gain permission for reentry into the U.S.
[25] 8 CFR § 212.22 (b)(1).

- Health;[26]
- Family status; [27]
- Assets, resources, and financial status; [28]
- Education and skills; [29]
- Prospective immigration status;[30]
- Expected period of admission[31]; and
- Any affidavit of support (Form I-864) filed by immigrants' sponsors to show that the immigrant applicants have adequate means of financial support and are not likely to become a public charge.[32]

III. What is Public Benefit under the 2020 Public Charge Rule?

The U.S. Department of Homeland Security (DHS) in the 2020 public charge rule has defined "public benefits" for purposes of a public charge inadmissibility. The definition under the 2020 rule does not include government funded and/or benefits programs related exclusively to emergency response, immunization, education, or social services, nor does it include exclusively state and local noncash aid programs.[33] Examples of noncash aid programs available at the state and local level to help victims include:

- Food distribution centers
- Soup kitchens
- Breakfast and lunch programs for children and the elderly
- Clothing distribution to low income persons
- Counseling services
- Programs for children
- Programs for crime victims

The public benefits that will be considered for purposes of adjudicating public charge are cash assistance programs for income maintenance, and an exhaustive list of non-cash food, housing, and healthcare programs designed to meet basic living needs. [34] Programs not included

---

[26] 8 CFR § 212.22 (b)(2).
[27] 8 CFR § 212.22 (b)(3).
[28] 8 CFR § 212.22 (b)(4).
[29] 8 CFR § 212.22 (b)(5).
[30] 8 CFR § 212.22 (b)(6).
[31] 8 CFR § 212.22 (b)(6).
[32] 8 CFR § 212.22 (b)(7) ("An affidavit of support under section 213A of the INA, when required under section 212(a)(4) of the INA, that meets the requirements of section 213A of the Act and 8 CFR 213a—(i)"); USCIS, *Form I-864* (Feb. 27, 2020) https://www.uscis.gov/i-864 (Form I-864, Affidavit of Support Under Section 213A of the INA: most family-based immigrants and some employment-based immigrants use this form to show they have adequate means of financial support and are not likely to rely on the U.S. government for financial support);
[33] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41312 (August 14, 2019)
[34] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41312 (August 14, 2019) ("DHS has defined public benefits by focusing on cash assistance programs for income maintenance, and an exhaustive list of non-cash food, housing, and healthcare, designed to meet basic living needs. This definition does not include benefits related exclusively to emergency response, immunization, education, or social services, nor does it include exclusively state and local noncash aid programs.")

within the definition of "public benefit" in the 2020 public charge rule will not be considered for purposes of public charge determinations.

"Public benefit" under the 2020 public charge rule means:

- Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:[35]
    - Supplemental Security Income (SSI)[36]
    - Temporary Assistance for Needy Families (TANF)[37]
    - Federal, State or local cash benefit programs for income maintenance[38];
- Supplemental Nutrition Assistance Program (SNAP);[39]
- Section 8 Housing Assistance under the Housing Choice Voucher Program;[40]
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation);[41]
- Public Housing (under section 9 of the U.S. Housing Act of 1937); [42] and
- Federally funded Medicaid, [43] except for listed exclusions:[44]
    - Emergency Medicaid
    - Individuals with Disabilities Education Act (IDEA) services
    - Elementary and secondary school based services
    - Medicaid benefits receive by under 21 year old children, pregnant women and mothers for 60 days following the last day of pregnancy.

IV. Can Office on Violence Against Women (OVW) Funded Transitional Housing and Other Types of Public Housing Create a Public Charge Issue for Immigrant Victims?

A. Is Transitional Housing a Public Benefit?

No. Transitional housing is a federally funded program that is necessary to protect life and safety. It is also considered under the public charge rule to be a social service program. Both of these categories of programs are not subject to restrictions based on immigration status,

[35] 8 CFR § 212.21 (b)(1).
[36] 8 CFR § 212.21 (b)(1)(i).
[37] 8 CFR § 212.21 (b)(1)(ii).
[38] Several states name state or locally funded income maintenance programs "General Assistance," however, these program exist under a variety of state specific names.
[39] 8 CFR § 212.21 (b)(2).
[40] 8 CFR § 212.21 (b)(3).
[41] 8 CFR § 212.21 (b)(4).
[42] 8 CFR § 212.21(b)(6).
[43] 8 CFR § 212.21 (b)(5).
[44] The exclusions in the 2020 public charge rule regarding what federal Medicaid funded programs will not be considered for purposes of public charge determinations are: (i) Benefits received for an emergency medical condition (ii) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 et seq.; (iii) School-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law; (iv) Benefits received by an immigrant under 21 years of age, or a woman during pregnancy (and during the 60- day period beginning on the last day of the pregnancy). *See* NIWAP, Public Benefits Map http://map.niwap.org/

and are therefore available to all immigrants. The types of federal benefits available to battered immigrants can be divided into four categories, under Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996:[45]

(1) "Federal means-tested public benefits"[46]

- These programs have the most immigrant restrictions. They are only open to "qualified immigrants"[47] who meet specified heightened program requirements and who
  - Entered the country before August 22, 1996; or
  - For immigrants who entered the country on or after August 22, 1996 they are only eligible five years after the date on which they became qualified immigrants.

(2) "Federal public benefits"[48]

- These programs are open to "qualified immigrants"

(3) Programs necessary to protect life and safety,[49] and

- Open to all persons without regard to immigration status.

(4) Other federally funded social service programs that do not fall within the definition of either "federal public benefit" or "federal means-tested public benefits".[50]

- Open without immigrant restrictions.

Moreover, transitional housing, which is by its nature a temporary and not permanent housing program, does not fall within the definition of "housing public benefits" in the 2020 public charge rule. The "housing public benefits" definition under the 2020 public charge rule

---

[45] For a discussion of state and federally funded programs that offer assistance and social services to all persons without regard to immigration status and the programs that certain immigrant crime victims can access once they become qualified immigrants, *see,* Cecilia Olavarria et. al., *Access to Programs and Services that Can Help Battered Immigrants,* http://niwaplibrary.wcl.american.edu/pubs/ch4-1-access-to-services-helpbatteredimm/ (discussing programs open to all immigrants); Cecilia Olavarria et. al., *Public Benefits Access for Battered Immigrant Women and Children,* http://niwaplibrary.wcl.american.edu/pubs/ch4-2-public-bens-access-battered-immigrants/ (discussing which federal public benefits and federal mean-tested public benefits programs battered immigrants who have applied for VAWA immigration relief can access); and Soraya Fata et. al.; *Access To Programs And Services That Can Help Victims of Sexual Assault* http://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims/ (discussing access to government funded benefits and services for all victims and federal means tested public benefits and federal public benefits certain immigrant crime victims can access).

[46] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Means Tested Public Benefit," 62 Fed. Reg. 45,256, at 45,257 (Aug. 26, 1997); Federal Means-Tested Public Benefits, 63 Fed. Reg. 36,653, at 36,654 (Jul. 7, 1998); Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions to Federal Means-Tested Public Benefits, 65 Fed. Reg. 49,994 (Aug. 16, 2000).

[47] PRWORA § 431(b), 8 U.S.C. § 1641(b). (For the definition of "qualified immigrants" go to page 11 of this document.)

[48] PRWORA § 401(c); 8 USC § 1611(c)(1)

[49] PRWORA § 401(d); Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613 (Jan. 16, 2001). For an overview of the range of programs and services open to all immigrants and immigrant victims without regard to immigration status *see,* Catherine Longville and Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status* http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants/

[50] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41387. *See also,* Cecilia Olavarria et. al., *Public Benefits Access for Battered Immigrant Women and Children*, *in* Breaking Barriers (2013), http://niwaplibrary.wcl.american.edu/pubs/ch4-2-public-bens-access-battered-immigrants

covers long-term housing benefits. There are only three housing programs listed among the programs that will be considered as "public benefits" for purposes of DHS public charge determinations:

- The Section 8 Housing Assistance under the Housing Choice Voucher Program. Under this program vouchers are issued by a local public housing agency to low income households so they can rent apartments or homes from private landlords.
- Section 8 Project-Based Rental Assistance. This is a program usually used by developers who rely on long-term Section 8 rent subsidy contracts to build or rehabilitate apartment buildings and then rent the units to lower-income households; and
- Public Housing. These are public housing units owned and operated by a public housing agency.[51]

Under the terms of the DHS 2020 public charge rule the "public benefit" list is a full and exhaustive list of the public benefits programs. This means that only the programs explicitly listed in the 2020 public charge rule can be considered in a public charge inadmissibility determination.[52]

Other housing programs not listed in the rule, such as Section 202 Supportive Housing for the Elderly, Section 811 Supporting Housing for Person with Disabilities, Housing Opportunities for Persons With AIDS (HOPWA), USDA Multi-Family Housing Rentals, and home loan and grant programs, will also not be considered in the public charge inadmissibility determination.[53]

B. Is Transitional Housing a Program that is Necessary to Protect Life and Safety?

PRWORA specifically exempted federally funded programs that are necessary to protect life and safety from immigrant restrictions making them available to all immigrants – including documented and undocumented immigrants as well as qualified immigrants. PRWORA authorized the U.S. Attorney General[54] to designate which particular programs are necessary to life and safety and are open to all persons without regard to immigration status.[55] To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, not based on the individual's income or

[51] Nat'l Housing Law Project, Memo: Housing Covered by Section 214 of the Housing and Community Development Act, 29 http://niwaplibrary.wcl.american.edu/wp-content/uploads/Info-Packet-Webinar-Immigrant-Access-and-Housing.pdf

[52] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41391 (August 14, 2019)

[53] Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292, 41378 (August 14, 2019).

[54] After PRWORA became law Attorney General Janet Reno issued a regulation defining which programs are necessary to protect life and safety and that definition remains in full force and effect. *See,* Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation on January 16, 2001, http://niwaplibrary.wcl.american.edu/pubs/pb-gov-protectionlifeorsafetyag-1-16-01

[55] 8 U.S.C. § 1611(b)(1)(D) (1998).

resources, and necessary to protect life or safety.[56] Pursuant to this authority, the Attorney General issued an order designating several programs as necessary to life and safety that include but are not limited to: [57]

- Crisis counseling and intervention programs;
- Services and assistance relating to child protection;
- Adult protective services;
- Violence and abuse prevention;
- Victims of domestic violence or other criminal activity;
- Treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens;
- Community food banks;
- Senior nutrition programs and other nutritional programs for persons requiring special assistance;
- Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety;
- Activities designed to protect the life and safety of workers, children and youths or community residents; and
- Any other programs, services, or assistance necessary for the protection of life or safety.

Thus, a broad range of programs that benefit immigrant victims of domestic violence, sexual assault, stalking, dating violence and human trafficking and their children are to be fully available to all victims without regard to their immigration status. This includes specifically violence and abuse prevention and short-term housing which has been defined to apply to both emergency shelter and transitional housing programs.[58] The following persons are legally

[56] Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61, Att'y Gen. Order No. 2129-97, (Nov. 17, 1997).

[57] Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation on January 16, 2001, http://niwaplibrary.wcl.american.edu/pubs/pb-gov-protectionlifeorsafetyag-1-16-01

[58] HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services (August 2016) *available at* http://niwaplibrary.wcl.american.edu/joint-agency-letter-shelters-transitional-housing (HUD, the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Justice (DOJ) issued a joint letter restating that federal grant recipients may not deny immigrants access to emergency shelter, and other short-term housing programs that are necessary *to protect life or safety*). *See also,* Letter from the Secretary of the U.S. Dep't of Housing and Urban Development 2 (Jan. 19, 2001), http://niwaplibrary.wcl.american.edu/pubs/hud-memo-transitional-housing ("Both emergency shelter and transitional housing programs are necessary for the protection of life and safety. Transitional housing is by nature short-term and intended to be a step in between emergency shelter and permanent housing.")

eligible to access emergency shelter and transitional housing without regard to their immigration status, citizenships status, nationality or limited English language proficiency:[59]

- Victims of:
  - Domestic violence[60]
  - Sexual assault[61]
  - Stalking[62]
  - Dating violence[63]
  - Human trafficking[64]
  - Child abuse[65]
  - Other abuse[66]
- Homeless[67]
- Runaway or homeless youth[68]
- Abandoned children[69]

Providers of services included in the Attorney General's list may not ask questions about immigration status of recipients or applicants for services. Only programs that fit the legal definition of "federal public benefits" and "federal means-tested public benefits" have immigrant restrictions and are only open to "qualified immigrants" who are subject to inquiries into the applicant's immigration status.[70]

Many immigrant victims of domestic violence, sexual assault, stalking, dating violence, and human trafficking are eligible for U visa, VAWA self-petition, SIJS, or T-visas and generally not subject to the public charge inadmissibility determinations.[71] Victims can therefore receive transitional housing and/or any other public benefits program or government

---

[59] HUD, HHS, and DOJ Joint Letter Regarding Access to Housing and Services at 3; S*ee also* HUD Letter 2001 *available at* http://library.niwap.org/wp-content/uploads/2015/pdf/PB-Gov-MemoHUDTransitionalHousing-01.19.01.pdf.
[60] *See* HUD Letter 2001 at 2.
[61] *See* HUD, HHS, and DOJ Joint Letter Regarding Access to Housing and Services at 2.
[62] *Id*.
[63] *Id*.
[64] *Id*. Furthermore, access to emergency shelter and transitional housing became available to victims of human trafficking in 2001 following passage of the Trafficking Victims Protection Act (TVPA) *See* TVPA 2000, 22 U.S.C. § 7105(b)(1)(A).
[65] *See* HUD Letter 2001 at 2.
[66] *See* HUD, HHS, and DOJ Joint Letter Regarding Access to Housing and Services at 2. (Other abuse includes but is not limited to the forms of crime victimization listed at U visa criminal activities. For a list of U visa criminal activities *see,* Department of Homeland Security, *Immigration Options for Victims of Crime -DHS Brochure* http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/
[67] *See* HUD Letter 2001 at 2.
[68] *See* HUD, HHS, and DOJ Joint Letter Regarding Access to Housing and Services at 3.
[69] *Id*.
[70] *See* Cecilia Olavarria et. al., *Public Benefits Access for Battered Immigrant Women and Children*, *in* Breaking Barriers 21 (2013), http://niwaplibrary.wcl.american.edu/pubs/ch4-2-public-bens-access-battered-immigrants.
[71] 8 CFR § 212.23.

funded resource that the immigrant victim or their children are legally able to access[72] and doing so will have no future public charge consequences for immigrant victims. Additionally, crime victims and their children who are lawful permanent residents can also access transitional housing. The public charge ground of inadmissibility does not apply for naturalization.[73] Therefore, if the victim is a lawful permanent resident and they need to access public benefits or are receiving public benefits, either due to victimization or to address basic economic needs the victim has, it will not create a public charge issue for the victim in the future.

Through the mechanisms discussed above, immigrant victims of domestic violence, child abuse, sexual assault, stalking, dating violence and human trafficking and their children are all able to access both transitional housing and emergency shelters without any risk that accessing such services could result in any public charge impact on any current or future immigration case or immigration status. Immigrant victims and children included in their applications who apply for or who received legal immigration status through VAWA self-petitioning, battered spouse waiver, U visa, T visa, asylum, refugee or SIJS programs are exempt from public charge. In cases of other immigrant crime victims who seek or obtain lawful permanent residency or admission into the U.S. in another form of legal immigration status, DHS adjudicators cannot consider any stay a victim had in a shelter or transitional housing program as part of any public charge ground of inadmissibility determination.

V. Public and Assisted Housing Programs Subject to Public Charge

There are three types of housing benefits specifically enumerated in the 2020 public charge rule that can be considered by USCIS when making public charge determinations:

1. Section 8 Housing Assistance under the Housing Choice Voucher Program;[74]
2. Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation); and[75]
3. Public Housing.[76]

In order to be eligible to receive benefits under these public and assisted housing programs an immigrant crime victim must be a qualified immigrant. Qualified immigrants" are:[77]

[72] NIWAP, Public Benefits Map http://map.niwap.org (To look up the full range of government funded services and state, federal and local public benefits immigrant victims are eligible for by state go to); *See also, Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status*, NIWAP (July 23, 2015), http://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants; *Training Materials: Public Benefits,* NIWAP (June 14, 2017) http://niwaplibrary.wcl.american.edu/public-benefits-training-materials.

[73] It is important to note that if a lawful permanent resident leaves the United States for longer than 180 consecutive days and then seeks permission to re-enter the United States, public charge will be considered as part of the DHS decision about whether to re-admit the immigrant to the U.S.

[74] 8 CFR § 212.21(b)(3).

[75] 8 CFR § 212.21(b)(4).

[76] 8 CFR § 212.21(b)(6).

[77] PRWORA § 431(b), 8 U.S.C. § 1641(b).

- Lawful permanent residents (including conditional permanent residents);[78]
- Refugees;
- Asylees;
- Persons granted withholding of deportation or cancellation of removal;
- Cuban/Haitian entrants;
- Victims of Trafficking;
- Veterans of certain United States military actions;
- Person granted conditional entry;
- Amerasians;
- Persons paroled into the United States for a year or more;
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or certain family-based immigrant petitions filed by their abusers; and
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident other parent, who have pending or approved VAWA cases or certain family-based petitions filed by their abusers.

Advocates and attorneys working with immigrant victims could encounter immigrant crime victims who may have one of the forms of immigration status on this list of qualified immigrants. The public charge rule does not prevent immigrants from obtaining benefits they are legally entitled to under PRWORA. The use of public or assisted housing or one of the other public benefits programs listed in the public charge rule by any qualified immigrant will be taken into consideration as part of a public charge determination if the immigrant applies for admission to the U.S. or for lawful permanent residency, unless the immigrant is on the exempt list.[79] Since the forms of immigration relief that make immigrant victims qualified immigrants include access to legal work authorization at some point in the immigration process, it is important to help victims apply for work authorization immediately once it becomes available.

They point in time after the victim files their application for immigration relief at which that immigrant applicant will be granted access to legal work authorization varies by the type of immigration status the immigrant has applied for or been granted.[80] When immigrant victims do not have a status that makes them exempt from public charge, advocates and attorneys should

---

[78] Conditional permanent residents are spouses of U.S. citizens who at the time of obtaining resident status where married less than two years. Therefore, USCIS issues a "green card" which expires two years after their residency interview and the immigrant spouse must submit a second application to remove the conditions on her residence status 90 days before her card expires.

[79] Exempt immigrants are: refugees, asylees, SIJS, U visas, T visas, and VAWA self-petitioners (includes VAWA self-petition, VAWA cancellation of removal, VAWA suspension of deportation, battered spouse waiver, VAWA Cuban Adjustment Act self-petition for lawful permanent residency, VAWA Nicaraguan and Central American Relief Act suspension of deportation, and VAWA Haitian Refugee and Immigration Fairness Act self-petition). DACA applicants are also exempt from public charge with regard to their DACA applications.

[80] For a tool to determine which forms of immigration status come with access to legal work authorization and at what point in the application process work authorization becomes available, *see*, Leslye E. Orloff, Andrea Carcamo and Lucia Macias, *Immigration Status, Work Authorization, and Ability to Sponsor Children* (April 17, 2013) http://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus.

assist them in how to use benefits and move off welfare as quickly as possible. It is best if victims who have used benefits can establish work history and an ability to sustain themselves and their children before they reach the point when a public charge determination will need to be made in their case.

For battered immigrant spouses and children, whether or not public charge inadmissibility will apply to their immigration case will depend on whether the victim's application is a case filed by the victim's citizen or lawful permanent resident spouse or if the victim's immigration case is a VAWA, U or T visa application.

For example, if a battered immigrant is living in a public housing with a spouse who is a lawful permanent resident or a citizen who files an application for the victim to receive lawful permanent residency, the victim, in the application filed by the spouse would be subject to public charge inadmissibility. If the victim files for VAWA self-petition the victim is exempt from the public charge ground of inadmissibility even if she applies for and receives public housing benefits or other benefits listed as "public benefits" under the public charge rule. Further, VAWA self-petitioners are eligible to receive public housing benefits and assistance under federally funded housing voucher programs, including Section 8, once their VAWA self-petition has been filed.[81] If the victim has a pending application for lawful permanent residency filed by her abusive citizen or lawful permanent resident spouse or parent, the victim could confidentially file a VAWA self-petition. Once the self-petition is filed, the victim would be exempt from public charge grounds when she obtains lawful permanent residency through the VAWA self-petition.

[81] This enables VAWA self-petitioners to apply for and receive both public and assisted housing subsidies. A VAWA self-petitioner living in public or assisted housing with her abusive husband can file a VAWA self-petition, file for housing benefits, obtain a protection order removing her abuser from the public housing unit and receive the housing subsidy (without proration) on her own behalf. *See,* NIWAP, *Access to Public and Assisted Housing VAWA Self-Petitioners* (January 26, 2017), http://niwaplibrary.wcl.american.edu/access-public-assisted-housing-vawa-self-petitioners/ (For information on how VAWA self-petitioners can apply for public and assisted housing).