

October 21, 2021

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via www.regulations.gov

Re: DHS- Docket No. USCIS-2021-0013; Comments on Public Charge Ground of Inadmissibility

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment in response to the Department of Homeland Security's (DHS) advance notice of proposed rulemaking (ANPRM) published on August 23, 2021.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low-incomes. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As a national anti-poverty organization, we understand the critical importance of federal programs that support the health and economic well-being of low-income families. We understand that our communities and economy depend on the labor of workers who too often receive modest pay and few benefits for their essential work. Public benefits play a critical role in supplementing their earnings. Nationally, such core health, nutrition, and housing assistance programs help nearly half of Americans make ends meet. Receipt of these programs does not mean that individuals are not contributing to society; rather, these programs represent the country's policy choices about how to help all workers and families succeed.

At CLASP, we believe that our immigration laws should not discourage immigrants and their family members from seeking physical and mental health care, nutrition, or housing benefits for which they are eligible. As discussed in more detail below, there is extensive evidence that the 2019 public charge rule generated extensive fear and confusion that caused immigrant families to avoid interacting with the government and forgo needed public benefits for which they are eligible -- even for family members who are citizens or who are not subject to a public charge test for naturalization. This "chilling effect" would have been damaging under any circumstances, but was particularly devastating when the COVID-19 pandemic struck in the United States, with many immigrants afraid to seek health care or other supports. Recent evidence confirms that the chilling effect is still impacting many immigrant communities, even though USCIS stopped applying the 2019 rule in early 2021.¹ Therefore, it is essential that DHS crafts a public charge policy that sets clear parameters so that immigrants, their families, service providers, and adjudicators can understand and communicate how a public charge assessment will be determined in order to minimize the chilling effect.

Public charge policy plays a considerable role in our nation's immigration system, serving as one of the criteria immigration officials take into account when determining who can obtain a green card to permanently live and work in the United States. The vast majority of people who obtain lawful permanent resident status in the U.S.—in most years,

¹ "Research Documents Harm of Public Charge Policy During the COVID-19 Pandemic," Protecting Immigrant Families (PIF), August 2021, <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/08/Research-Documents-Harm-of-Public-Charge-Policy-During-the-COVID-19-Pandemic-2.pdf>

about 700,000² out of a total of 1 million³—are subject to the public charge ground of inadmissibility. Over the next decade, the public charge test could directly affect an estimated seven million people, shaping our family-based immigration system.

Because of the discriminatory history of the public charge provision, it is essential that the Administration mitigate the disparate impact on immigrants who are people of color. The history of public charge is steeped in a deep-rooted prejudice against those who comprise a racial, ethnic, or social underclass. The first public charge laws in this country were adopted by the states. For example, New York State passed a law in 1847 that prohibited the landing of “any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of emigrating families, and who . . . are likely to become permanently a public charge.”⁴ The motivation for these laws derived from both financial concerns and cultural prejudice against the Catholic Irish who often arrived in the United States without the financial resources to support themselves.⁵ The first federal statute precluding the admission of immigrants based on potential public charge was passed by the 47th Congress and signed into law on August 3, 1882,⁶ three months after it had passed the Chinese Exclusion Act.⁷ After the establishment of immigration quotas based on national origin in the 1920s, the public charge provision was used to exclude European Jews seeking to escape Nazi genocide.⁸ In light of this history, the Administration should develop a public charge policy that sets guardrails to prevent a public charge determination from being used as a weapon to discriminate against people of color, women, people with disabilities, older adults, or anyone else.

We urge DHS not to exclude people from immigrating or obtaining a green card simply because conditions in their countries of origin, discrimination they may have faced in the U.S., and other circumstances have made it difficult for them to complete an education, secure professional credentials, or earn a high income. Individuals who have faced these hardships are incredibly important contributors to our nation, as described in further detail in our comment.

This comment responds to the following topics and their underlying questions posed in the ANPRM:

- A. Purpose and Definition of Public Charge
- B. Prospective Nature of the Public Charge Inadmissibility Determination
- C. Statutory Factors
- D. Affidavit of Support Under Section 213A of the INA
- F. Public Benefits Considered
- G. Previous Rulemaking Efforts

A. Purpose and Definition of Public Charge

² More than 700,000 obtain LPR status as immediate relatives of U.S. Citizens or family-sponsored preferences, which requires that they undergo a public charge determination. U.S. Department of Homeland Security, “Table 6: Persons Obtaining Lawful Resident Status by Type and Major Class of Admission: Fiscal Years 2017 to 2019,” <https://www.dhs.gov/immigration-statistics/yearbook/2019/table6>.

³ About 1 million people obtain LPR status per year. U.S. Department of Homeland Security, “Table 1: Persons Obtaining Lawful Status: Fiscal Years 1820 to 2019,” <https://www.dhs.gov/immigration-statistics/yearbook/2019/table1>.

⁴ *Laws of the State of New York Passed at the Sessions of the Legislature*, Vol. 1, New York State Legislature, originally published prior to 1923, law in question published between 1847 and 1860, <https://books.google.com/books?id=nVdNAQAAMAAJ&pg=PA184&lpg=PA184&dq=%22any+lunatic,+idiot,+deaf+and+dumb,+blind+or+infirm+persons,+not+members+of+emigrating+families,+and+who,+from+attending+circumstances,+are+likely+to+become+permanently+a+public+charge%22&source=bl&ots=ij-lXsleii&sig=Lyr85eEdyMmz42df37RArAdZrjs&hl=en&sa=X&ved=2ahUKEwiNycr-vvzeAhVpp1kKHZi0DKgQ6AEwAnoECAMQAQ#v=onepage&q=%22any%20lunatic%2C%20idiot%2C%20deaf%20and%20dumb%2C%20blind%20or%20infirm%20persons%2C%20not%20members%20of%20emigrating%20families%2C%20and%20who%2C%20from%20attending%20circumstances%2C%20are%20likely%20to%20become%20permanently%20a%20public%20charge%22&f=false>.

⁵ Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States & the 19th-Century Origins of American Immigration Policy*, Oxford University Press 2017, p. 2., <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780190619213.001.0001/acprof-9780190619213>.

⁶ Immigration Act of August 3, 1882, 22 Stat. 214, “Fees for execution and issuance of passports; persons excused from payment,” August 1882, <https://www.law.cornell.edu/uscode/text/22/214>.

⁷ Immigration Act of May 6, 1882, 22 Stat. 58, https://www.law.cornell.edu/wex/chinese_exclusion_act.

⁸ Barbara Bailin, *The Influence of Anti-Semitism on United States Immigration Policy With respect to German Jews During 1933-1939*, City University of New York 2011, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1261&context=cc_etds_theses.

1. How should DHS define the term “public charge”?

DHS should define someone likely to become a public charge for inadmissibility purposes as a person who is “likely to become primarily and permanently reliant on the federal government to avoid destitution.” In addition to the reasons laid out below, such a narrow and carefully tailored definition of public charge would avoid discrimination as well as support the contributions of immigrants, the economy, and the nation’s health.

Under this definition, reliance on the government should not be taken into account unless:

- **The government provides the *primary* source of income.** Many people receive public benefits that supplement their earnings by improving their access to nutrition, health care, and other services. Using these supplemental benefits will not make a person a public charge. In addition, if an individual is relying on a benefit, but is also receiving income from a job or income from other family members in the household, the individual is not *primarily* reliant on the government.
- **The reliance is *permanent*.** There are many scenarios where people receive government benefits for a period of time but not permanently: for example, if an individual is currently using a benefit but is about to get a raise or a new job and will no longer access it, or if someone is recovering from a temporary illness or treatment and relying on a federal government benefit to recuperate.
- **The reliance is to avoid destitution.** The Board of Immigration Appeals has held that the “ordinary meaning” of the term public charge, refers to individuals “being destitute.”⁹ Likewise, federal courts have held repeatedly in *in forma pauperis* cases that public charge and destitute are synonymous.¹⁰

2. What data or evidence is available and relevant to how DHS should define the term “public charge”?

This definition would be consistent with the congressional intent and historical understanding of public charge as applying to a narrow set of immigrants who are likely to become a “public charge” by virtue of being so in need of assistance that they were housed in almshouses and poorhouses for indefinite stays. When the concept of public charge was first created, the current system of public benefits that support working families did not exist. As our system of public benefits developed in the 20th century, there has never been an expectation that individuals who received support for health care, food or housing would be considered to be “public charges.” For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that reassurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.

This definition is also consistent with case law. In 2020, the Second Circuit Court of Appeals relied on the Board of Immigration Appeals’ interpretation of ‘public charge’ to mean a person who is “unable to support herself, either through work, savings, or family ties.”¹¹ The Ninth Circuit Court of Appeals found that the concept of public charge did not “encompass” people who used benefits that “were not sufficient to provide basic sustenance.”¹² The Board of Immigration Appeals has held that the “ordinary meaning” of the term public charge, refers to individuals “being destitute.”¹³ Likewise, federal courts have held repeatedly in *in forma pauperis* cases that public charge and destitute are synonymous.¹⁴

⁹ Matter of Harutunian, Interim Decision #2263, p. 583 - 590, Dec. February 1974, <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/17/2263.pdf>.

¹⁰ *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305 (11th Cir. 2004), <https://casetext.com/case/martinez-v-kristi-kleaners-inc>.

¹¹ *New York v. United States Department of Homeland Security*, Docket No. 19-3591 and *Make the Road New York v. Cuccinelli*, Doc. No. 19-3595 (2nd Cir. 2020), https://ag.ny.gov/sites/default/files/ca2_opinion_-_public_charge.pdf.

¹² *City and County of San Francisco v. United States Citizenship and Immigration Services, et. al.*, No. 19-17213, D.C. No. 4:19-cv-04717- PJH (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/12/02/19-17213.pdf>

¹³ *Matter of Harutunian*, Interim Decision #2263, p. 583 - 590, Dec. February 1974, <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/17/2263.pdf>.

¹⁴ *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305 (11th Cir. 2004), <https://casetext.com/case/martinez-v-kristi-kleaners-inc>.

3. How might DHS define the term “public charge”, or otherwise draft its rule, so as to minimize confusion and uncertainty that could lead eligible individuals to forgo the receipt of public benefits?

As discussed in more detail in F, Public Benefits Considered, the research evidence does not support the idea that receipt of public benefits predicts future dependence on government. Therefore, as indicated in section F, we believe the course most consistent with the evidence and most likely to minimize the confusion and uncertainty caused by the public charge rule is to avoid consideration of any benefit receipt. However, if DHS does not choose this route, DHS should at the least:

- State that only named public benefit programs will be taken into consideration, and include in the preamble language a list of other types of government services or benefits such as food, health, housing, employment, nutrition, education, child care, immigration fee waivers, small business loans, earned benefits that are *not* included as factors in a public charge test. DHS should also create guidance where additional/new programs can be added as a reliable resource and reference.
- Set a clear look back window for any consideration of benefits.
- Clarify that use of benefits during this window is not in itself sufficient for the forward-looking public charge adjudication -- there would have to be evidence that use is likely to be permanent.
- Make clear in the I-485 form and its instructions that applicants only need to provide information about the use of named public benefits during the lookback period.
- Clarify that benefits used by family members or sponsors are not taken into account in a public charge determination.
- Clarify that benefits received while a child or when in an exempt status are not taken into account in a public charge determination. In fact, as noted in section F below, receipt of core health, economic, and nutrition benefits by a child is linked in the research to higher levels of earning and education later in life - so it should never be considered in any way as a negative factor.

B. Prospective Nature of the Public Charge Inadmissibility Determination

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4),¹⁵ provides that an applicant for a visa, admission, or adjustment of status is inadmissible if he or she is likely at any time to become a public charge. Thus, by definition, it is a forward looking test, and the statutory factors are only relevant to the extent that they meaningfully predict future outcomes.

Without guardrails, predicting who is likely to become a public charge “at any time in the future” is an act of speculation that could allow immigration officers to discriminate, whether consciously or due to implicit bias.

In rulemaking, DHS must consider evidence that immigrants improve their economic status overtime. Analysis conducted by the Center for Health Policy Research found that immigrants have substantial economic mobility. When immigrants first arrive in the United States, they have less social capital and their job skills and experience may not align perfectly with the American job market. Over time, immigrants’ social capital increases and job skills and experience improve, increasing their income to eventually catch up to non-immigrants. Additionally, immigrants with low education close the immigrant-native income gap even faster, catching up with similar US-born counterparts within seven years.¹⁶ Research also shows that access to lawful permanent residence and citizenship can help lift families out of poverty and create economic prosperity for immigrants and their children.¹⁷ Lawful status and citizenship can help parents secure better paying jobs, lift families out of poverty, and reduce the stress associated with living without legal status. These

¹⁵ 8 U.S.C. Sec. 1182, <https://www.govinfo.gov/link/uscode/8/1182?type=usc&year=mostrecent&link-type=html>.

¹⁶ Leighton Ku and Drishti Pillai, “The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities,” November 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

¹⁷ Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, “The Social Mobility of Immigrants and Their Children,” Migration Policy Institute, June 2009, <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>.

benefits are passed down to children—especially when parents are able to obtain legal status early in their child’s life—leading to better educational and workforce outcomes when their children reach adulthood.¹⁸

This is consistent with case law regarding public charge, which includes numerous examples where even decades-long past receipt of cash benefits did not result in a public charge finding because of the “totality of circumstances” test was used in the applicant’s favor, including showing changes in employment history and other life circumstances. Moreover, empirical analysis of recent immigrants, using a machine learning algorithm, confirms that even those immigrants who had several characteristics deemed “negative” under the 2019 rulemaking, did not in fact have a significant likelihood of becoming public charges.¹⁹

Future rulemaking should also take into account the fact that public programs are often used as work supports which contribute to long-term self-sufficiency. Using benefits can help individuals and their family members become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant factors that contribute to future economic self-sufficiency.

As discussed in our responses to section F, Public Benefits, we do not believe that previous or current use of public benefits is a meaningful predictor of future primarily and permanent reliance on the federal government to avoid destitution. If DHS does determine that use of benefits is relevant, the best way to ensure fairness is to ask adjudicators to look back at an applicant’s use of specified benefits either currently or solely for a limited lookback period, such as two years. By definition, if an applicant used benefits further in the past, and is not currently using them, their circumstances have changed and their previous use of benefits is not relevant to a prospective assessment. This creates a clear standard that is easy for USCIS to train on and for adjudicators to implement consistently and without bias, and also will reduce the chilling effect where people fear that any use of benefits, however old or temporary, will be held against them. We also believe that use of benefits by children should never be considered a negative factor, as it is dependent on their parents’ circumstances, not their own, and research finds that use of benefits predicts better earnings and educational outcomes in the future.

C. Statutory Factors

DHS should not repeat the mistakes of the 2019 public charge rule by defining the statutory factors in a manner that disproportionately burdens people of color, women and people with disabilities or that creates the opportunity for conscious or implicit bias to affect an individual adjudicators’ determinations. For example, the 2019 public charge rule counted income under 125 percent of the federal poverty level as a “heavily weighted negative factor,” which likely would have resulted in an immigration policy that favors white immigrants from Europe rather than Latino, Black, and Asian immigrants from Mexico, Central America, the Caribbean, Asia, or Africa.²⁰ Further, after the Trump administration’s State Department made radical changes to the public charge provisions of its Foreign Affairs Manual in 2018, denials of visas to Mexican nationals skyrocketed.²¹ Following these changes to public charge policy, the State Department denied more than 5,300 immigrant visa applications from Mexican nationals on public charge grounds compared to seven denials in the last full fiscal year of the Obama administration. Aside from Mexico, other countries, including India, Bangladesh, Haiti, and the Dominican Republic, experienced a significant increase in visa denials on

¹⁸ Lisa A. Keister, Jody Agius Vallejo, and E. Paige Borelli, “Mexican American Mobility,” Stanford Center on Poverty and Inequality, April 2013, https://inequality.stanford.edu/sites/default/files/media/media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

¹⁹ Mitra Akhtari, John Coglianese, and Heather Sarsons, “Estimating the Empirical Likelihood of Becoming a ‘Public Charge’”, *N.Y.U. Journal of Legislation & Public Policy*, August 2021, <https://nyujlpp.org/quorum/estimating-the-empirical-likelihood-of-becoming-a-public-charge/>.

²⁰ Randy Capps, Mark Greenberg, Michael Fix and Jie Zong, Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration, Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

²¹ Ted Hesson, “Exclusive: Visa Denials to Poor Mexicans Skyrocket under Trump’s State Department,” August 2019, <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094>.

public charge grounds.²²

The Biden administration's January 20, 2021 Executive Order on racial equity requires federal government agencies, including DHS, to promote equitable delivery of government benefits and equitable opportunities for all.²³ To ensure that the public charge rule is being equitably implemented, USCIS should regularly report data that indicates green card denials on public charge grounds by country of origin. The State Department regularly reports on immigrant visas refused under different grounds, including public charge.²⁴ This data was critical in identifying that the 2018 changes to the FAM guidance had led to a surge in denials of immigrant visas at embassies and consulates abroad.²⁵ Ideally, USCIS would report on this monthly or quarterly (with appropriate lag time) to give the agency and stakeholders a better understanding of the implementation of a new public charge policy.

DHS should craft an NPRM that requires adjudicators to:

- **Consider the affidavit of support, when it is required, as creating a presumption that the applicant overcomes the public charge ground of inadmissibility.** As discussed further below, DHS should propose that a properly filed affidavit of support satisfies the INA 212(a)(4) requirements and creates a presumption that the applicant overcomes the public charge ground of inadmissibility.
- **If adjudicators identify a circumstance that might make someone likely to meet the definition of a public charge, they should look to the totality of circumstances to see if there is evidence to overcome the circumstance.** DHS should propose that adjudicators look at all the factors together to see if they would make an applicant likely to become a public charge. If adjudicators identify a circumstance that would serve on its own as a predictor that a person is "likely to become primarily and permanently reliant on the federal government to avoid destitution," then they should look to the totality of circumstances to see if there is also evidence to *overcome* the circumstance. The judicial and administrative decisions that were used to inform adding the five "totality of circumstances" factors to the statute in 1996 overwhelmingly found immigrants *not* excludable based on one or more of the factors when considering the totality of circumstances. In other words, the five statutory factors and totality of circumstances test were ways to demonstrate that an applicant would *not* be excludable as a public charge and were never intended to be a list of negative and positive factors to be weighed individually in every case. For example, if "financial status" is a concern because the applicant is not working while also in nursing school, but "education and skills" are positive because the applicant is training to become a nurse, on balance the person is not "likely to become primarily and permanently reliant on the federal government to avoid destitution." DHS should also provide reasonable opportunities for applicants to address or cure any concerns about the statutory factors, and propose that a properly filed affidavit of support be sufficient to overcome or outweigh any negative factors identified when looking at the factors together.
- **Adjudicators should consider *only* whether the child has an affidavit of support, which should be sufficient to establish a presumption that the child is not a public charge.** The statutory factors should be applied to children who are subject to the public charge test in the context of the expectations for their life stage. Twelve-year-olds are not expected to support themselves, much less five-year-olds. Children do not have control over their education or economic resources, and these factors have no predictive power for their likelihood of being a public charge in the future.

D. Affidavit of Support Under Section 213A of the INA

²² *ibid.*

²³ E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

²⁴ US Department of State, Bureau of Consular Affairs, *Report of the Visa Office 2020*, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2020.html>. See tables on Immigrant and Nonimmigrant Visa Ineligibilities,

²⁵ Ted Hesson, "Exclusive: Visa Denials to Poor Mexicans Skyrocket under Trump's State Department," August 2019, <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094>.

DHS should consider the Affidavit of Support as creating a presumption that the applicant overcomes the public charge ground of inadmissibility. In particular, DHS should propose that a properly filed affidavit of Support satisfies the INA 212(a)(4) requirements and creates a presumption that the applicant overcomes the public charge ground of inadmissibility. Simply put, an immigrant who has a sponsor who has committed to providing financial support if needed can be safely assumed to not be likely “to become primarily and permanently reliant on the federal government to avoid destitution.”

The affidavit of support’s legislative history indicates that it is intended to allow the immigrant to be admitted when there would otherwise be a public charge concern. This history is reflected in the USCIS adjudicator’s field manual, which indicates that the affidavit of support’s purpose “is to overcome the public charge ground of inadmissibility.”²⁶ Under rules in place from when the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was implemented in 1997, consular officials have accepted the affidavit of support as the primary, and in most cases the only, form of evidence to establish that the immigrant visa applicant is not likely at any time to become a public charge.²⁷ The current Foreign Affairs Manual instructions also clarify that a properly filed affidavit of support should “normally be considered sufficient” to satisfy the public charge determination.²⁸ In addition, when considering the 2019 public charge rule, the U.S. Court of Appeals for the Seventh Circuit noted that the affidavit of support’s legislative history indicates that it is intended to allow the immigrant to be admitted when there would otherwise be a public charge concern.

Finally, relying on the affidavit of support to provide a favorable presumption is easier to administer, providing an effective way to apply a fair and transparent decision-making tool, and avoiding potential discrimination. DHS should prohibit immigration officials from questioning the credibility or motives of a sponsor who signs an affidavit of support, looking only to its legal validity. By contrast, the 2019 rule’s implication that adjudicators should question the motivations and commitment of sponsors who have completed an affidavit of support opens the door for implicit or explicit cultural or racial bias in the assessment of which relationships are real. For example, immigration lawyers reported that when the State Department implemented a similar policy in January 2018, the U.S. consulate in Ciudad Juarez was particularly likely to issue denials on the basis of public charge, compared to consulates in other countries.²⁹

F. Public Benefits Considered

As noted earlier, previous or current use of public benefits is only relevant to the forward looking public charge determination to the extent that it provides meaningful evidence about the applicant’s future likelihood to become primarily and permanently reliant on the federal government to avoid destitution. When the five statutory factors were added to our immigration laws as part of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, none of the five factors added included benefit receipt.³⁰

A relationship between previous use of benefits and future dependency has often been assumed, but is not based on evidence. In fact, significant evidence demonstrates the positive short- and long-term effects of receipt of public benefit programs. As a result, we believe that the most evidence-based approach for the public charge regulation would be to eliminate the use of benefit program use as a criterion. We believe this approach is

²⁶ USCIS, *Adjudicator’s Field Manual*, Section 20.5(k)(7), <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm20-external.pdf>.

²⁷ Charles Wheeler, State Department Redefines Public Charge Standard, CLINIC, January 2018, <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/state-department-redefines-public-charge>.

²⁸ U.S. Department of State, *Foreign Affairs Manual*, 9 FAM 302.8 (U), <https://fam.state.gov/fam/09fam/09fam030208.html>.

²⁹ Yeganeh Torbati and Kristina Cooke, “Denials of U.S. immigrant visas skyrocket after little-heralded rule change”, *Reuters*, April 2019, <https://www.reuters.com/article/us-usa-immigration-visas-insight/denials-of-u-s-immigrant-visas-skyrocket-after-little-heralded-rule-change-idUSKCN1RROUX>.

³⁰ J. Duval, “The Problem with Public Charge.” *The Yale Law Journal*, Vol. 130, Number 4, February 2021, <https://www.yalelawjournal.org/note/the-problem-with-public-charge>.

justified based on what we have learned over the past two decades about the chilling effects of the public charge rule. However, should DHS not choose this approach, we believe the evidence also provides guidance for strong guardrails to ensure narrow use of the information.

Medicaid

Overall, there is an extensive and strong research literature that shows, as a recent *New England Journal of Medicine* review concludes “Insurance coverage increases access to care and improves a wide range of health outcomes.”³¹ Medicaid expansion has been found to lead to: increases in people getting regular check-ups and decreases in people without a usual source of care; increases in prescriptions filled for chronic conditions such as heart disease and diabetes, and decreases in people skipping medications due to cost; earlier diagnosis and treatment of major diseases such as cancer and renal disease, leading to better outcomes.³² The 2019 public charge rule rightly considered health insurance a positive factor in the totality of circumstances, but arbitrarily excluded public insurance for purely ideological reasons.

Health insurance is particularly important for children, and even the 2019 rule did not count children or pregnant people’s use of Medicaid or CHIP as a negative factor. Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs.³³ Low-income children with Medicaid use well-child and dental health services compared to similar children with private insurance.³⁴ Duration of insurance coverage matters greatly: children who are insured consistently throughout a given year are far more likely to receive necessary health care services than those whose coverage is volatile.³⁵

Insurance coverage in childhood promotes positive development and good health, which in turn enable better health, educational, and employment outcomes later in life. Individuals exposed to Medicaid during early childhood have better composite health scores, lower incidences of high blood pressure, lower rates of obesity, fewer emergency room visits, and reduced hospitalizations as adults.³⁶ Similarly, childhood Medicaid eligibility is associated with high school graduation rates, college attendance, and higher incomes in adulthood.³⁷ Another study using data from the IRS to measure long-term impacts of childhood Medicaid expansion on outcomes in adulthood, found that greater Medicaid eligibility increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.³⁸

Further, research finds that improving parents’ access to health coverage also improves enrollment for children. Research shows that children’s development depends on the health and well-being of their parents and caregivers. For instance, between 2012 and 2014, the first year of full implementation of the Affordable Care Act, children’s Medicaid and CHIP participation rates, the percentage of children eligible and enrolled, went up from 88.7 to 91 percent as more

³¹ Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherine Baicker, Ph.D., “Health Insurance Coverage and Health — What the Recent Evidence Tells Us,” *New England Journal of Medicine*, July 2017, <http://www.nejm.org/doi/full/10.1056/NEJMs1706645>.

³² The Far-Reaching Benefits of the Affordable Care Act’s Medicaid Expansion, Center on Budget and Policy Priorities, October 2020, <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid-expansion#3>.

³³ Christine Percheski and Sharon Bzostek, “Public Health Insurance and Health Care Utilization for Children in Immigrant Families,” *Maternal and Child Health Journal*, Vol. 21, 2017, <https://link.springer.com/article/10.1007/s10995-017-2331-y>.

³⁴ Lisa Dubay and Genevieve M. Kenney, “Health Care Access And Use Among Low-Income Children: Who Fares Best?” *Health Affairs*, 2001, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.20.1.112>.

³⁵ Lindsey J., “Partial-Year Insurance Coverage and the Health Care Utilization of Children,” *Med Care Res Rev* 66 , 2009, <https://www.ncbi.nlm.nih.gov/pubmed/18981264/>; Thomas Buchmueller, Sean M. Orzol, and Lara Shore-Sheppard, “Access to Care: Evidence from the Survey of Income and Program Participation,” *International Journal of Health Care Finance and Economics*, Vol. 14, 2014, <https://www.ncbi.nlm.nih.gov/pubmed/24504692>.

³⁶ Alisa Chester and Joan Alker, “Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid,” *Georgetown University Health Policy Institute Center for Children and Families*, 2015, https://ccf.georgetown.edu/wp-content/uploads/2015/08/Medicaid-at-50_final.pdf; Sarah Miller and Laura R. Wherry, “The Long-Term Effects of Early Life Medicaid Coverage,” Working Paper, *Social Science Research Network*, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466691.

³⁷ Karina Wagnerman, Alisa Chester, and Joan Alker, “Medicaid is a Smart Investment in Children,” *Georgetown University Center for Children and Families*, March 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>.

³⁸ David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, “Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood,” *Yale University Department of Economics*, June 2018, <http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf>.

adults gained coverage through Medicaid or marketplaces.³⁹ Additional research by Child Trends finds that a parents' health was more strongly associated with his or her child's health than many other socioeconomic or demographic factors.⁴⁰

SNAP

Receipt of nutrition assistance under the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) is associated with increased household food security, a social determinant of health. With the recent revision of the Thrifty Food Plan to reflect current food prices and dietary guidance, SNAP recipients will be more able to purchase a realistic healthy diet, which is likely to strengthen the impact of SNAP on health and economic outcomes.⁴¹ Further, research suggests that many people only use SNAP for limited periods of time when they have reduced hours or earnings. One USDA study found that only about 25 percent of the working poor who were ever eligible for SNAP during a calendar year were eligible all 12 months.⁴²

Even before the update, children of immigrants who participate in SNAP were more likely to be in good or excellent health, be food secure, and reside in stable housing. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.⁴³ An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence.⁴⁴

Another study examined whether increasing the family's economic resources when a child is in utero and during childhood improves later life health and economic outcomes. Using data from the Panel Study of Income Dynamics to link family background and county of residence with adult health and economic outcomes, the researchers found that access to food assistance leads to a significant reduction in the incidence of metabolic syndrome and, for women, an increase in economic self-sufficiency.⁴⁵

Further, additional evidence finds that SNAP improves food security and frees up resources that can be used for health-promoting activities and needed medical care. SNAP participants are more likely to report excellent or very good health than low-income non-participants. Elderly SNAP participants are less likely than similar non-participants to forgo their full prescribed dosage of medicine due to cost.⁴⁶

Conversely, children living in food insecure households are more likely to suffer from poor health and frequent illness and to be hospitalized more frequently.⁴⁷ Specifically, child food insecurity is associated with chronic diseases and health

³⁹ "Health Coverage for Parents and Caregivers Helps Children," *Georgetown University Health Policy Institute Center for Children and Families*, March 2017, <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Covering-Parents-v2.pdf>.

⁴⁰ David Murphey and Samuel Beckwith, "A parent's health is one of the strongest predictors of a child's health," *Childtrends*, January 2019, <https://www.childtrends.org/blog/a-parents-health-is-one-of-the-strongest-predictors-of-a-childs-health>.

⁴¹ "USDA Modernizes the Thrifty Food Plan, Updates SNAP Benefits," U.S. Department of Agriculture, August 2021, <https://www.usda.gov/media/press-releases/2021/08/16/usda-modernizes-thrifty-food-plan-updates-snap-benefits>.

⁴² Mark Prell, Constance Newman, and Erik Scherpf, "Annual and Monthly SNAP Participation Rates," U.S. Department of Agriculture, August 2015, https://www.ers.usda.gov/webdocs/publications/45412/53600_err192.pdf?v=0.

⁴³ Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive*, 2018, <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>

⁴⁴ Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

⁴⁵ Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Association*, April 2016, pp. 903-934, <https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf>.

⁴⁶ Steven Carlson and Brynne Keith-Jennings, "SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs," *Center on Budget and Policy Priorities*, January 2018, <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

⁴⁷ Craig Gundersen and James P. Ziliak, "Food Insecurity and Health Outcomes," *Health Affairs* 34, 2015,

conditions, including asthma, behavioral and social-emotional problems (e.g., hyperactivity), birth defects, mental health problems (such as depression and anxiety), frequent colds and stomach aches, and oral care problems.⁴⁸ Not having enough to eat also affects children's ability to perform in school. Food insecurity is associated with lower scores on reading and math assessments and a greater likelihood of grade retention.⁴⁹ Among low-income seniors, receipt of SNAP is associated with reduced hospitalization costs.⁵⁰

Housing assistance

Eviction due to inability to afford rent often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which are associated with negative health among adults and children. Even just the threat of eviction can lead to high blood pressure, depression, anxiety, and psychological distress.⁵¹ Research also shows that children whose families take up a housing voucher to move to a lower-poverty neighborhood when they are less than 13 years of age have significantly higher college attendance rates and an annual income that is 31 percent higher, on average.⁵²

Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher on measures of well-being—especially when housing assistance is accompanied by food assistance.⁵³ Without housing assistance, children are more likely to live in overcrowded conditions, become homeless, and move frequently.⁵⁴ They

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0645>; John T Cook, Deborah A. Frank, Carol Berkowitz, et al., "Food insecurity is associated with adverse health outcomes among human infants and toddlers," *The Journal of Nutrition*, vol. 134, 2004, <https://academic.oup.com/jn/article/134/6/1432/4870889>.

⁴⁸ Lauren D. Mangini, Mark D. Hayward, Yong Quan Dong, et al., "Household food insecurity is associated with childhood asthma," *The Journal of Nutrition*, vol. 145, 2015, <https://academic.oup.com/jn/article/145/12/2756/4585668>; Rachel Tolbert Kimbro and Justin T. Denney, "Transitions into Food Insecurity Associated with Behavioral Problems and Worse Overall Health Among Children," *Health Affairs*, 2015, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0626>; Anna D. Johnson and Anna J. Markowitz, "Associations Between Household Food Insecurity in Early Childhood and Children's Kindergarten Skills," *Child Development*, 2018, <https://onlinelibrary.wiley.com/doi/pdf/10.1111/cdev.12764>; Suzan L. Carmichael, Wei Yang, Amy Herring, et al., "Maternal Food Insecurity is Associated with Increased Risk of Certain Birth Defects," *Journal of Nutrition*, vol. 137, 2007, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2063452/>; Natalie Slopen, Garratt Fitzmaurice, David R. Williams, et al., "Poverty, Food Insecurity, and the Behavior for Childhood Internalizing and Externalizing Disorders," *Journal of the American Academy of Child & Adolescent Psychology*, vol. 49, 2010, http://scholar.harvard.edu/files/davidrwilliams/files/2011-poverty_food_insecurity-williams.pdf; Priya Shankar, Rainjade Chung, and Deborah A. Frank, "Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systemic Review," *Journal of Developmental and Behavioral Pediatrics*, vol. 38, 2017, <https://pdfs.semanticscholar.org/4655/Oad7196155123c70dcd1cc5af710879ae27a.pdf>; Katie A. McLaughlin, Jennifer Greif Green, Margarita Alegria, et al., "Food Insecurity and Mental Disorders in a National Sample of U.S. Adolescents," *Journal of American Academic Child Adolescent Psychiatry*, vol. 51, 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632292/>; Katherine Alaimo, Christine M. Olson, Edward A. Frongillo Jr., et al., "Food Insufficiency, Family Income, and Health in US Preschool and School-Age Children," *American Journal of Public Health*, vol. 91, 2001, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446676/pdf/11344887.pdf>; Donald L. Chi, Erin E. Masterson, Adam C. Carle, et al., "Socioeconomic Status, Food Security, and Dental Caries in US Children: Mediation Analyses of Data from the National Health and Nutrition Examination Survey, 2007-2008," *American Journal of Public Health*, vol. 104, 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987603/>.

⁴⁹ Priya Shankar, Rainjade Chung, and Deborah A. Frank, "Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systemic Review," *Journal of Developmental and Behavioral Pediatrics*, vol. 38, 2017, <https://pdfs.semanticscholar.org/4655/Oad7196155123c70dcd1cc5af710879ae27a.pdf>; Diana F. Hyoti, Edward A. Frongillo, and Sonya J. Jones, "Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills," *Journal of Nutrition*, vol. 135, 2005, <https://pdfs.semanticscholar.org/7d09/8555673094109056fd3beb58dc4464570bc0.pdf>; Bergen B. Nelson, Rebecca N. Dudovitz, Tumaini R. Coker, et al., "Predictors of Poor School Readiness in Children Without Developmental Delay at Age 2," *Pediatrics*, 2016,, <http://pediatrics.aappublications.org/content/138/2/e20154477>.

⁵⁰ Laura J. Samuel, Sarah L. Szanton, Rachel Cahill, Jennifer L. Wolff, Pinchuan Ong, Ginger Zielinskie, and Charles Betley, "Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization Among Older Adults? The Case of Maryland," *Population Health Management*, 2018, <http://doi.org/10.1089/pop.2017.0055>.

⁵¹ Jennifer Hiser, Ellen Morris, Hannah Payne, Amy Plovnick, and Ayesha Shahid, *Just Cause Eviction: Rapid Health Impact Assessment (RHIA)*, http://www.mapc.org/wp-content/uploads/2017/11/HIA_Just_Cause_final.pdf

⁵² Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," *Harvard University and NBER*, August 2015, http://scholar.harvard.edu/files/hendren/files/mto_paper.pdf.

⁵³ Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., "Overcrowding and Frequent Moves Undermine Children's Health," *Children's HealthWatch*, 2011, www.issuelab.org/resources/13900/13900.pdf.

⁵⁴ Michelle Wood, Jennifer Turnham, Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation,"

are also more likely to remain in high-poverty neighborhoods, which is associated with poor health and educational outcomes.⁵⁵ Research demonstrates that when housing subsidies are permanent, reliable, and consistent, they are more likely to have positive impacts on children's behavior, access to health care, and food security.⁵⁶

Various forms of housing instability have adverse outcomes on child development, including poor health and developmental risk.⁵⁷ Mothers who experience homelessness or frequent moves while pregnant are more likely to have preterm deliveries and babies with low birth weights.⁵⁸ Children in poverty who move frequently during early childhood have higher rates of attention difficulties and behavior problems.⁵⁹ Housing instability in childhood is also associated with poor health and more hospitalizations over the course of a child's life.⁶⁰ Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions, limiting students' opportunity to obtain the education they need to succeed later in life.⁶¹

Income

Receipt of income also has benefits for economic security. Using data from seven random-assignment studies conducted by MDRC that collectively evaluated 10 welfare and antipoverty programs in 11 sites, the researchers found that a \$1,000 increase in annual income sustained for between 2- and 5-years boosts child achievement in school and standardized test scores by 6% of a standard deviation.⁶² A recent study of a basic income pilot found that participants experienced less month-to-month income volatility, lower anxiety and improved mental and physical health. Contrary to concerns that cash payments deter employment or job searching, the SEED project showed that there was an increase in full time employment for those that did receive the monthly payment, compared to those who did not.⁶³

Receipt of cash benefits is also often temporary. Even during the height of the Great Recession, the majority of people receiving TANF cash assistance received it for less than 12 months.⁶⁴ Many children receive SSI as infants

Housing Policy Debate, 2008, [www.abtassociates.com/reports/Woods_Turnham_Mills_\[11\]_HPD.pdf](http://www.abtassociates.com/reports/Woods_Turnham_Mills_[11]_HPD.pdf); Janet Currie, Aaron Yelowitz, "Are Public Housing Projects Good for Kids?" *Journal of Public Economics*, 2000, www.yelowitz.com/CurrieYelowitzJPubE2000.pdf; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-term Gains Among Children*, Center on Budget and Public Policy, 2015, www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf.

⁵⁵ Barbara Sard, Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, Center on Budget and Policy Priorities, 2016, <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to>.

⁵⁶ Aletha C. Huston, "U.S. Commentary: Effects of Housing Subsidies on the Well-Being of Children and Their Families in the Family Options Study," *Cityscape: A Journal of Policy Development and Research*, 2017, <https://www.huduser.gov/portal/periodicals/cityscape/vol19num3/ch15.pdf>.

⁵⁷ Diana Becker Cutts, Alan F. Meyers, Maureen M. Black, et al, "US Housing Insecurity and the Health of Very Young Children," *American Journal of Public Health*, 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134514/>.

⁵⁸ Diana B. Cutts, Sharon Coleman, Maureen M. Black, et al., "Homelessness During Pregnancy: A Unique, Time-Dependent Risk Factor of Birth Outcomes," *Maternal Child Health Journal*, 2015, <https://link.springer.com/article/10.1007%2Fs10995-014-1633-6>; Bianca V. Carrion, Valerie A. Earnshaw, Trace Kershaw, et al, "Housing Instability and Birth Weight among Young Urban Mothers," *Journal of Urban Health*, 2015, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4338127/>.

⁵⁹ Kathleen M. Ziol-Guest, Claire C. McKenna, "Early Childhood Housing Instability and School Readiness," *Child Development*, 2014, <https://onlinelibrary.wiley.com/doi/abs/10.1111/cdev.12105>.

⁶⁰ Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, et al, "Unstable Housing and Caregiver and Child Health in Renter Families," *Pediatrics*, 2018, https://www.researchgate.net/profile/Mariana_Chilton/publication/322642849_Unstable_Housing_and_Caregiver_and_Child_Health_in_Renter_Families.

⁶¹ Mai Abdul Rahman, "The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education" Ph.D. dissertation, Howard University, March 2014, <http://gradworks.umi.com/3639463.pdf>.

⁶² Greg J. Duncan, Pamela A. Morris, and Chris Rodrigues, "Does Money Really Matter? Estimating impacts of family income on young children's achievement with data from random-assignment experiments," *Developmental Psychology*, September 2011, pp. 1263-1279, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208322/pdf/nihms-330900.pdf>.

⁶³ Dr. Stacia West, Dr. Amy Castro Baker, Sukhi Samra, and Erin Coltrera, "Preliminary Analysis: SEED's First Year, 2021," https://static1.squarespace.com/static/6039d612b17d055cac14070f/t/603ef1194c474b329f33c329/1614737690661/SEED_Preliminary+Analysis-SEEDs+First+Year_Final+Report_Individual+Pages+-2.pdf.

⁶⁴ Shelley K. Irving and Tracy A. Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?*, Household Economic Studies, May 2015, <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>.

due to low birthweight but stop receiving it once they have caught up with their developmental milestones. Over half of SSI child recipients are found not to qualify for SSI when they turn 18 and are evaluated using the adult standards for eligibility.⁶⁵ And there are multiple federal work incentives programs that help people receiving SSI go to work by minimizing the risk of losing their SSI or Medicaid benefits.⁶⁶

Taken together, this and other research shows the strong, positive, and long-run effects on health, educational, and economic attainment.

In light of the lack of evidence supporting a relationship between past receipt of public benefits and future likelihood of becoming a public charge, we urge DHS not to consider use of public benefits in a public charge determination, but rather to rely solely on the affidavit of support and the five statutory factors. This is most consistent with the research, is also consistent with the statute -- which nowhere mentions benefit programs -- and would allow for clear consistent messaging to immigrants and their families that it is safe to use benefits for which they are eligible and would overcome the chilling effect of the public charge rule. As discussed in more detail under Section G, Previous Rulemaking, the 2019 rule created widespread harm, discouraging use of benefits by immigrants and their families, including those who are not subject to a public charge determination, and for programs, such as WIC and school meals, that were not included in the 2019 rule.

Should DHS not accept this recommendation, we recommend putting the following limitations on the consideration of benefit receipt in the public charge determination:

- **Do not include programs that provide in-kind benefits.** Receipt of health care, nutrition or housing assistance is not an indication that a person is primarily or permanently reliant on the government. These programs are widely available and frequently used to supplement earnings or other sources of income. The Center on Budget and Policy Priorities estimated that nearly half of U.S.-born citizens received one of the benefits included in the 2019 rule in their lifetime.⁶⁷
- **Specifically, do not consider Medicaid – even for institutional long term care – in a public charge determination.** According to the Kaiser Family Foundation, today in the U.S., one in three people turning 65 will require nursing home care in their lives, and Medicaid is the primary payer for long-term care in the US, covering six in ten nursing home residents.⁶⁸ We should not penalize immigrants for our national policy choices that make Medicaid the only meaningful payer for long-term care and make it difficult to get care at home and force people into institutional care. In addition, including any type of Medicaid benefit in the public charge determination has been shown to confuse and frighten people and lead them to forgo health care.
- **Exclude programs funded completely by state, local, tribal and territorial governments.** Clarify that state or local government funded programs—even if they provide cash assistance—are exercises of the powers traditionally reserved to the states and are not counted as factors in a public charge test. We recommend this approach because limiting the benefits that may be considered to *federal benefits* will be easier for adjudicators to administer and to explain to immigrants and their families than a patchwork of state, local and tribal programs, reducing the chilling effect. States and localities have a compelling interest in promoting health and safety that includes providing benefits at their own expense without barriers caused by federal policies. Since these benefits vary significantly by state, specifically naming federal programs that are relevant will make the public charge rule easier for both immigrants and DHS adjudicators to understand.

⁶⁵ Social Security Administration, “2016 Annual Report of the SSI Program” https://www.ssa.gov/oact/ssir/SSI16/V_D_Redet_CDRdata.html#389380.

⁶⁶ Social Security Administration, “Understanding Supplemental Security Income Work Incentives,” <https://www.ssa.gov/ssi/text-work-ussi.htm>.

⁶⁷ Danilo Trisi, “Administration’s Public Charge Rules Would Close the Door to U.S. to Immigrants Without Substantial Means” Center on Budget and Policy Priorities, November 2019 <https://www.cbpp.org/research/immigration/administrations-public-charge-rules-would-close-the-door-to-us-to-immigrants>.

⁶⁸ Kaiser Family Foundation, “Medicaid’s Role in Nursing Home Care,” June 2017, <https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>.

With these guidelines in place, the only two programs that would be considered in the public charge determination are cash assistance under Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI). However, receipt of these programs in itself does not make someone a public charge, and is only one small part of the totality of circumstances test. DHS should direct adjudicators only to consider current use of these benefits, or at most, benefits within a specific lookback period (such as two years). Older use of benefits provides no additional information on the likelihood of future receipt, as the applicants' circumstances have obviously changed. For example, perhaps someone relied on cash assistance while getting a degree, and has now graduated and has a full time job. A specified lookback window supports fairness, consistency, and predictability of decisions across adjudicators, minimizing the opportunity for bias, and reduces the chilling effect.

In addition, DHS should make clear that use of even TANF or SSI under the following circumstances will not be held against applicants:

- **Exclude family members and sponsors' use of benefits.** DHS should make clear that benefits used by an applicant's family members or sponsors do not count as factors in the applicant's public charge test. This is critical in minimizing the chilling effect of the public charge rule on access to child-specific benefits by U.S. citizen children and on access to benefits by other people, who are not subject to a public charge determination but whose family members may seek LPR status in the future.
- **Exclude any use of benefits by survivors of domestic violence and other serious crimes and by anyone during public emergencies.** Benefits used by survivors of domestic violence or other serious crimes, or used by anyone during natural disasters or other extraordinary circumstances, such as the COVID-19 pandemic or in the aftermath of hurricanes and wildfires, should not be included as factors in a public charge determination. Use of these benefits is due entirely to external events and does not provide any information on the recipient's likelihood of becoming primarily and permanently reliant on government assistance at a future date. While some survivors of domestic violence are eligible for specific visa status that exempt them from public charge, large numbers of victims do not seek, or are ineligible for survivor-specific forms of status, and thus, will be impacted by the public charge rule. The harms of such consideration were made clear during the COVID-19 pandemic. Though USCIS stated⁶⁹ that COVID-19 testing, treatment, and vaccines would not be used against immigrants in a public charge determination early in the pandemic, surveys by state-based⁷⁰ and national organizations⁷¹ found that immigrant families did not access medical treatment for COVID-19, even when sick, because they were concerned about immigration consequences and similarly families avoided pandemic-specific programs despite reporting that cash, food, and employment were the most pressing needs during the pandemic.
- **Specify that use of benefits as a child will never be treated as a negative in the public charge determination.** Use of benefits as a child is primarily a statement about parents' economic status, and shines no light on children's future employability. In fact, the evidence shows the contrary: as discussed above, the evidence is overwhelming that children's use of benefits supports their health and development and improves their long-term educational and employment outcomes.
- **Specify that use of benefits when in or applying for a status exempt from the public charge requirement will not be included in a public charge determination regardless of a person's pathway to legal status.** Benefits received when in an exempt status, such as cash assistance provided to a refugee, should be excluded regardless of a refugee's pathway to legal status. Benefits should also be excluded if an individual is applying for an exempt status, for example, if an individual has applied for asylum.
- **DHS should identify and update a list of the programs that do not count in order to minimize the chilling effect.** The regulation should include language that says, that "benefits other than SSI or TANF shall not be

⁶⁹ American Immigration Lawyers Association, "Practice Alert: COVID-19 and the Public Charge Rule," June 15, 2020 <https://www.aila.org/advocacy/aila-practice-pointers-and-alerts/practice-alert-covid-19-and-the-public-charge-rule>

⁷⁰ MIRA (2020). The Impact of COVID-19 on Immigrants in Massachusetts: Insights from our Community Survey. Written by Marion Davis for the Massachusetts Immigrant and Refugee Commission. Boston, Mass. Available at <http://www.miracoalition.org/cvsurvey>.

⁷¹ Hamutal Bernstein, Jorge Gonzalez-Hermoso, Dulce Gonzalez, Jahnvi Jagannath, "Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis" Urban Institute, August 2020, <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.

considered in a public charge determination.” In the preamble, the NPRM and final rule should name as many as possible of the other types of cash, tax, food, health, housing, employment, nutrition, education, immigration fee waivers, and other benefits that are *not* included as factors in a public charge test and create guidance where additional/new programs can be added as a reliable resource. The guidance should address COVID-related, other disaster-related benefits such as FEMA, and unemployment insurance benefits in particular; in addition to programs that provide universal basic or guaranteed income to all. The preamble should state that any omission of a program from this list should not be interpreted by adjudicators and community members to mean that it will be counted.

G. Previous Rulemaking Efforts

We commend USCIS for removing the 2019 public charge rule from the Code of Federal Regulations and restoring the 1999 Field Guidance—however, there is more work to do to end the policy’s lasting harm. Research has confirmed that the lead up to and rollout of the Trump-era public charge policy created a “chilling effect,” with immigrants and their family members afraid to apply for immigration benefits and access critical health, nutrition, and economic supports for which they were eligible. The Trump policy took effect just weeks before the start of the COVID-19 pandemic in the United States, which amplified the health and economic harms of the pandemic. Moreover, even though the 2019 policy is no longer in effect, there continues to be lasting impacts on immigrants and their family members’ willingness to access public benefits.

Chilling effects of 2019 rule

Heading into the COVID-19 pandemic, survey and program data confirmed that the chilling effects of the Trump-era public charge policy are real.

- Researchers from UCLA found that one out of four (25%) low-income adults in California reported avoiding public programs out of fear that participating would negatively impact their own immigration status or that of a family member in 2019. Researchers also found evidence that these chilling effects are associated with adverse health outcomes, including higher food insecurity and uninsured rates.⁷²
- The Migration Policy Institute analyzed American Community Survey data for 2016 through 2019 and found that participation in TANF, SNAP, and Medicaid declined far more rapidly for noncitizens than U.S. citizens. This trend held for both the overall and low income populations. In addition, the share of children receiving benefits under TANF, SNAP, and Medicaid fell about twice as fast among U.S. citizen children with noncitizen household members as it did among children with only U.S. citizens in their household. Eligibility for these programs did not change during this time period.⁷³
- A recent analysis of the U.S. Department of Agriculture’s SNAP Quality Control data found that national participation in SNAP among children in mixed-status households dropped by 22.5 percent (more than 718,000 children) between fiscal years 2018-2019. This drop represents a decrease that is five times that of the decrease among U.S. children in citizen-only households.⁷⁴
- Research published in *Health Affairs* found evidence of the causal effect of the announcement of the Trump public charge regulations on access to public benefits. The researchers’ analysis of state-reported data shows

⁷² Suan H. Babey, Joelle Wolstein, Riti Shimkhada, Nine A. Ponce, “One in 4 Low-Income Immigrant Adults in California Avoided Public Benefit Programs, Likely Worsening Food Insecurity and Access to Health Care” UCLA Center for Health Policy Research, March 2021 <https://healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=2072>.

⁷³ Randy Capps, Michael Fix, and Jeanne Batalova, Migration Policy Institute, “Anticipated ‘Chilling Effects’ of the Public Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families,” December 2020. <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

⁷⁴ Alexandra Ashbrook, Food Research and Action Center. “[New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen](#)”. May 2021

that the announcement of the public charge regulations was associated with a decrease in Medicaid enrollment of approximately 260,000 children from 2017 levels.⁷⁵

- In a subsequent special immigrant-focused edition of *Health Affairs*, research shows that the Trump-era public charge regulation likely deterred essential workers from seeking needed care and aid during the COVID-19 pandemic. Using Census Bureau data, researchers found that the public charge policy likely caused 2.1 million essential workers and household members to forgo Medicaid and 1.3 million to forgo SNAP.⁷⁶
- New York City analyzed SNAP program data and found that from January 2018 to January 2019, the SNAP caseload for non-citizens fell by more than three times the caseload for citizens (the caseload dropped 10.9% for non-citizens and 2.8% for citizens). From January 2017 to 2018, the SNAP caseload for noncitizens dropped by nearly double that of citizens (the caseload dropped 6.2% for non-citizens and 3.2% for citizens).⁷⁷
- In a series of focus groups conducted in 2019 and into January 2020 by FRAC and the National Immigration Law Center, more than one-quarter of immigrant parents who were surveyed reported that they stopped using the Supplemental Nutrition Assistance Program (SNAP) or other food programs in the last two years; this was due to immigration-related concerns, and was echoed by nutrition service providers.⁷⁸

Since COVID-19 began, research continues to document that immigrant families are forgoing critical health and economic support programs because of public charge concerns.

- In a survey conducted in December 2020, the Urban Institute found that adults in low-income immigrant families had suffered serious employment impacts from the economic crisis (51.8 percent), had experienced high rates of food insecurity in the past year (41.4 percent), and were worried about meeting their basic needs in the next month, including having enough to eat (43.2 percent) and being able to pay rent or a mortgage (50.8 percent), utility bills (49.1 percent), or medical costs (52.1 percent). Despite facing disproportionate hardships throughout the pandemic, more than 1 in 4 adults in low-income immigrant families (27.5 percent) reported they or a family member avoided noncash benefits or other help with basic needs because of green card or other immigration concerns in 2020.⁷⁹
- The Urban Institute found that in 2020, adults in immigrant families with children were more likely to report chilling effects than their counterparts without children (20.0 percent versus 15.0 percent). Nonpermanent residents were most likely to report that they or a family member experienced chilling effects at 42.3%. This group of respondents would have been more likely than other immigrant families to be affected by the public charge rule.⁸⁰
- In 2020, the Urban Institute found that approximately one in seven adults in immigrant families (13.6%) reported that they or a family member avoided public benefit programs, such as Medicaid, CHIP, SNAP, or housing assistance, because of concerns about future green card applications. Among families in which one or more members did not have a green card, the chilling effect was more severe - more than one in four (27.7%) adults in these families reported avoiding benefits because of green card concerns.⁸¹
- In a 2021 poll from the Kaiser Family Foundation among Hispanic adults in the United States, one in ten (11%) respondents reported that they or their family member have avoided participating in a government assistance

⁷⁵ Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez, Anthony Barrows, "Spreading Fear: The Announcement of the Public Charge rule Reduced Enrollment in Child Safety-Net Programs" *Health Affairs*, October 2020, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763>.

⁷⁶ Sharon Touw, Grace McCormack, David Himmelstein, Steffie Woolhandler, and Leah Zallman. "Immigrant Essential Workers Likely Avoided Medicaid And SNAP Because Of A Change To The Public Charge Rule," *Health Affairs*, July 2021, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2021.00059>.

⁷⁷ New York City, "[Department of Social Services and Mayor's Office of Immigrant Affairs, Fact Sheet: SNAP Enrollment Trends in New York City](#)," June 2019.

⁷⁸ Alexandra Ashbrook. Jackie Vimo, Food Research and Action Center, National Immigration Law Center. "[Food Over Fear: Overcoming Barriers to Connect Latinx Immigrant Families to Federal Nutrition and Food Programs](#)." December 2020

⁷⁹ Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, Urban Institute. "[Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis yet Avoided Safety Net Programs in 2020](#)" May 2021.

⁸⁰ Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, Dulce Gonzalez, Urban Institute. "[Many Immigrant Families with Children Continued to Avoid Public Benefits in 2020, Despite Facing Hardships](#)". May 2021.

⁸¹ Hamutal Bernstein, Michael Karpman, Dulce Gonzalez, and Stephen Zuckerman, Urban Institute, "Immigrant Families Continued Avoiding the Safety Net during the COVID-19 Crisis" February 2021 <https://www.urban.org/sites/default/files/publication/103565/immigrant-families-continued-avoiding-the-safety-net-during-the-covid-19-crisis.pdf>.

program that helps with food, housing, or health care because they were afraid it might negatively affect their or a family member's immigration status. That figure more than doubles to 26% among potentially undocumented Hispanic adults.⁸²

- A survey of community-based organizations conducted by the Urban Institute found evidence of avoidance of COVID-19 relief programs because of immigration concerns. Despite not being implicated in Trump's public charge regulation, immigrant-serving organizations reported chilling effects in Pandemic EBT, a program designed to feed children who were receiving free or reduced priced meals at school, as well as other key federal relief programs.⁸³

Research and providers report that immigrants are afraid to access medical treatment for COVID-19 due to public charge concerns.

- Based on a survey of immigrant households in Massachusetts conducted by the Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition, of all survey respondents who got sick and didn't seek COVID-19 testing and treatment, approximately 10% reported fears being labeled a public charge and another 6% reported fears that their information would be shared with immigration agents as reasons why they didn't get tested. Among respondents with undocumented members in the household, nearly 18% reported fears of being labeled a public charge and about 13% reported fears that their information would be shared with immigration agents.⁸⁴
- Based on a survey of community-based organizations conducted by the Urban Institute, nearly 70% reported that public charge and other anti-immigrant policies deterred the people they serve from seeking COVID-19 testing and treatment. That survey found that 43% of service providers reported that "some" clients are avoiding COVID-19 testing or treatment because of immigration enforcement or immigration status concerns. An additional 26 percent indicated that "almost everyone" or "many" had been deterred from testing or treatment by immigration concerns.⁸⁵
- A physician who provides medical care to farmworkers in California stated that his patients are "afraid to seek medical care" and are "fearful of negative immigration consequences if they use publicly subsidized medical services due to the public charge rule" during the pandemic. People who harvest and process the crops that keep our nation fed are working while sick because they cannot afford to feed their own families if they stay home and are "afraid to apply for nutrition assistance programs... due to the fear that if they receive those benefits, the public charge rule will negatively affect their immigration status in the future."⁸⁶
- A medical resident working at a community health center in Connecticut reported patients with COVID-19 symptoms who were afraid to go to the hospital or seek testing because of public charge.⁸⁷
- An attorney in California reported that survivors of human trafficking and crime victims who lost their jobs or experienced reduced income because of COVID-19 were afraid to apply for unemployment and receive nutrition assistance programs to support their families.⁸⁸

Research shows that anti-immigrant policies, like public charge, are creating misinformation about eligibility and undermining vaccination efforts.

⁸² Liz Hamel, Samantha Artiga, Alauna Safarpour, Mellisha Stokes, Mollyann Brodie, Kaiser Family Foundation. [KFF COVID-19 Vaccine Monitor: COVID-19 Vaccine Access, Information, and Experiences Among Hispanic Adults in the U.S.](#) May 2021.

⁸³ Hamutal Bernstein, Jorge Gonzalez, Dulce Gonazalez, Jahnavi Jagannath, Urban Institute, "Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis" August 2020 <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.

⁸⁴ MIRA (2020). The Impact of COVID-19 on Immigrants in Massachusetts: Insights from our Community Survey. Written by Marion Davis for the Massachusetts Immigrant and Refugee Commission. Boston, Mass. Available at <http://www.miracoalition.org/cvsurvey>.

⁸⁵ Hamutal Bernstein, Jorge Gonzalez, Dulce Gonazalez, Jahnavi Jagannath, Urban Institute, "[Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis](#)" August 2020.

⁸⁶ [Motion by Government Plaintiffs to Temporarily Lift or Modify the Court's Stay of the Orders Issued by the United States District Court for the Southern District of New York](#). Department of Homeland Security, et al. v. New York, et al. (April 13, 2020). Retrieved April 27, 2020..

⁸⁷ Ibid.

⁸⁸ Ibid.

- In a poll conducted by the Kaiser Family Foundation, over a third (35%) of respondents, rising to 63% of potentially undocumented Hispanic adults, reported concerns that by getting the COVID-19 vaccine, they will negatively affect their own or a family member's immigration status.⁸⁹
- The Kaiser Family Foundation also found that there are gaps in information about who is eligible for the vaccine and how to get it among the Hispanic population. At least half of surveyed respondents were unaware that the vaccines are free for all U.S. residents and that all adults are eligible regardless of immigration status.⁹⁰
- Social epidemiologist Amanda Latimore at the Johns Hopkins Bloomberg School of Public Health cites public charge specifically as a driver of vaccine hesitancy among Latinx families.⁹¹

Evidence suggests that many immigrant families are unaware of the reversal of the Trump-era public charge policy and, despite being reversed, the harm of the Trump-era policy continues.

- Based on interviews held with 19 individuals in California immigrant families with low-incomes between March and April 2021, the Urban Institute found that less than half (9) of the interviewees had heard that the Trump-era public charge policy had been reversed.⁹² Unpublished and upcoming findings from a poll the Protecting Immigrant Families commissioned and fielded in September 2021 also find that a considerable share of immigrant families have not heard a lot about the end of the Trump public charge policy. The research findings from the Urban Institute and upcoming results from the PIF coalition's poll suggests that there's a considerable share of immigrant families who are still not aware of the Administration's reversal of the 2019 public charge policy. However, even when immigrants are aware of the changed policy, some are concerned that a future administration will simply change the policy back to the 2019 policy -- and that it will be applied retroactively. Therefore, it is critical that a final rule be adopted as soon as possible.
- Public charge continues to drive vaccine hesitancy among immigrant families, Roll Call reported in June. A UCLA public health expert quoted in that story warned that "There's still a lot of confusion about this notion that a reliance on government services may threaten your ability to stay here and work or may threaten the future of your children, your family and getting a green card and eventually becoming a citizen."⁹³
- Despite pandemic-driven food insecurity increases, public charge continues to drive down SNAP access among Latino families in Northern California. As the national food trade outlet Civil Eats reported in April, "although the rule has recently been rescinded, the fear remains within immigrant communities."⁹⁴ And as the Woodland Daily Democrat reported in late July, "experts said it will take years and concerted effort to rebuild trust between government and immigrants after the public charge rule."⁹⁵
- A Georgetown Center on Children & Families analysis cited by Stateline in June cites public charge as a driver of the spike in uninsured Latino kids. A Texas advocate validates the statistics with real-world experience: "we saw many families not applying or not renewing or literally pulling out of these services even though they were entitled to them."⁹⁶
- As the National Low-Income Housing Coalition warned the Atlanta Journal-Constitution in July, "Immigrant communities, often rightfully so, are very fearful of applying for assistance," due to public charge and anti-immigrant state policies.⁹⁷ Further, across the country, a California advocate warned the Fresno Bee that

⁸⁹ Liz Hamel, Samantha Artiga, Alauna Safarpour, Mellisha Stokes, Mollyann Brodie, Kaiser Family Foundation. [KFF COVID-19 Vaccine Monitor: COVID-19 Vaccine Access, Information, and Experiences Among Hispanic Adults in the U.S.](#) May 2021.

⁹⁰ Ibid.

⁹¹ The Baltimore Sun, ["Building Community trust essential to COVID vaccine acceptance" December 2020.](#)

⁹² Hamutal Bernstein, Dulce Gonzalez, Sara McTarnaghan, Sonia Torres Rodriguez, "Three in 10 Adults in California Immigrant Families with Low Incomes Avoided Safety Net Programs in 2020" Urban Institute, July 2021, https://www.urban.org/sites/default/files/publication/104623/three-in-10-adults-in-california-immigrant-families-with-low-incomes-avoided-safety-net-in-2020_1.pdf.

⁹³ Caroline Simon, Roll Call. ["Immigrants crucial to vaccinating US, but gaps remain"](#). June 2021.

⁹⁴ Megan Carney & Terea Mares, Civil Eats. ["Op-ed: How the Pandemic Made it Harder For Immigrants to Access Food"](#). April 2021

⁹⁵ Leonardo Castañeda & Jesse Bedayn, Woodland Daily Democrat. ["I was looking at a nightmare: Spanish-speakers hard hit by COVID relied on food banks instead of government assistance"](#). July 2021

⁹⁶ Michael Ollove, Stateline. ["Enrollment in Health Insurance Lags Among Latino Children."](#) June 2021

⁹⁷ Lizzie Kane & Lautaro Grinspan, The Atlanta Journal-Constitution. ["Pandemic brings more hardships for Georgia's unauthorized immigrants"](#). July 2021

immigrant families who struggled to cover rent and other basic needs “don’t seek help or government assistance, even when they qualify, because they fear doing so could jeopardize their status in the country.”⁹⁸

1999 Guidance and NPRM

The 1999 guidance explicitly acknowledges the confusion that had been created around public charge and notes that this confusion “has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.”⁹⁹ The guidance, and the corresponding NPRM, were therefore designed to reduce this confusion.

We acknowledge that in this response that we are recommending the exclusion of certain benefits that were countable under the 1999 guidance. We believe that this is justified based on what we have learned over the past two decades about the chilling effects of the public charge rule and their applicability in practice.

- The 1999 guidance and NPRM provided that Medicaid for long-term care can be considered in a public charge determination. As noted previously, we believe this is inappropriate, as use of Medicaid for long-term care is driven by our societal choices about home and community based services, as well as the failure of Medicare and private insurers to pay for. Moreover, this exception, while it does not change the results of many public charge determination, dramatically increases the difficulty of explaining the public charge rules to impacted populations, as it makes it inaccurate to say “Use of Medicaid is never held against you in an immigration decision.”
- The 1999 guidance included state and local benefits. Given the plethora of potential state and local programs, this makes it impossible to give a clear listing of the specific programs that can be considered for public charge. Moreover, it introduces confusion and uncertainty precisely at the moments when states and localities are responding to urgent need and timely assistance is critical.
- The 1999 guidance did not provide a clear rule regarding receipt of benefit by an applicant’s family member. It notes that in general, the receipt of benefits by a family member is not attributable to the applicant, but notes that, on a case-by-case basis, the applicant may be considered to have received public cash assistance if the family is “reliant” on the benefits as its “sole means of support.” This provision may discourage parents from applying for benefits on behalf of their eligible children, including U.S. citizens and makes it hard to give clear and accurate guidance to immigrants. We have heard repeatedly that immigration attorneys routinely advise their clients not to apply for benefits on behalf of their children, so as to err on the side of caution. One of the few provisions of the 2019 guidance that we recommend keeping is the clear statement that benefits received by family members will not be counted against immigrants in a public charge determination.

The 1999 guidance acknowledged that it is not possible to list all the benefits that an individual might receive that are *not* countable toward a public charge determination, but provides an illustrative list. This list has been very helpful for providing definitive reassurance to concerned immigrants who seek an authoritative statement from DHS, not just the informed opinion of non-governmental entities. Therefore, DHS should publish and regularly update a list of benefits that are never considered in a public charge determination.

For example, below is a proposed list of benefits that DHS should make clear are not part of a public charge determination:

- Medicaid and other health care services : including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, short-term rehabilitation

⁹⁸ Nadia Lopez, the Fresno Bee. "[They paid rent through COVID-19. Now they’re broke and can’t get help from California programs](#)". July 2021

⁹⁹ Immigration and Naturalization Service, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, May 26, 1999, <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>.

- services, long-term care and emergency medical services; Children's Health Insurance Program (CHIP); and health insurance Marketplace coverage, premium subsidies and cost-sharing reductions;
- Nutrition programs, including Supplemental Nutrition Assistance Program (SNAP, also known as “Food Stamps” or “EBT”), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, Pandemic EBT and other supplementary and emergency food assistance programs;
 - Housing benefits, such as subsidized housing, public housing, and Section 8 housing subsidies, and emergency rental assistance;
 - Child care services, including child care subsidies;
 - Cash payments for a particular purpose, such as the Low Income Home Energy Assistance Program (LIHEAP);
 - Emergency disaster relief, including federal, state or local disaster assistance paid in cash;
 - Foster care and adoption assistance;
 - Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education, Pell Grants, Student loans; student loan forbearance (suspended payments, stopped collections, and 0% interest), and Higher Education Emergency Relief Funds;
 - Job training programs;
 - Employment-related benefits including (Pandemic Unemployment Assistance (PUA), unemployment insurance or state equivalents, paid family or medical leave, or worker’s compensation);
 - Transportation vouchers or non-cash transportation services;
 - Non-cash benefits or non-recurring cash benefits under the Temporary Assistance For Needy Families Program (TANF);
 - Tax credits, including the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC); and Economic Impact Payments (also known as “stimulus checks”);
 - Benefits provided without regard to income (for example the Alaska Permanent Fund Dividends, child allowances, or basic income payments);
 - In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

In addition, DHS should maintain and update a list of all the groups who are exempt or protected against a public charge determination. The 1999 Field Guidance includes a brief section on categories of immigrants to whom the public charge ground of inadmissibility does not apply, but this list is now out of date, as it does not reflect the last two decades of laws. The 2019 rule included an updated list, but it was not exhaustive. DHS should propose issuing a guidance that can be updated and expanded when new laws or policies provide additional exempt or protected immigration categories.¹⁰⁰ DHS should seek comment to ensure that the initial list is complete, and to ensure that the proposed language and process will capture all exempt and otherwise protected categories that could be created in the future.

Conclusion

In conclusion, CLASP recommends that DHS swiftly promulgate regulations on public charge that set clear parameters and counter the chilling effect. this harm. Our comments include citations to research and documents for the benefit of DHS in reviewing our comments. We request that these, along with the full text of our comments, be considered part of the formal administrative record.

Thank you for the opportunity to submit comments. Please do not hesitate to contact us at Elizabeth Lower-Basch at elowerbasch@clasp.org and Renato Rocha at rrocha@clasp.org if you have any questions or need any further information.

¹⁰⁰ This type of guidance would likely fall into the category of “interpretive rules” which are exempted from notice and public comment rulemaking under the Administrative Procedures Act (5 USC 553(b)).