

Samantha Deshommès, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comments in Response to Proposed Rulemaking, Public Charge Ground of Inadmissibility, [DHS Docket No. USCIS-2021-0013](#) and RIN: 1615-AC74

Submitted via the Federal eRulemaking Portal at <https://www.regulations.gov/>.

Dear Ms. Deshommès:

I am writing on behalf of the Center for Law and Social Policy (CLASP) in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) published in the Federal Register on February 24, 2022. We believe that there should be no public charge barrier to immigrate to the U.S., and we will continue to work to change the statute. Until then, this rule represents a common sense approach to implementing the law, but could be strengthened to reduce the chilling effect on immigrants and their families.

We write to largely support the administration's proposed rule that would restore and improve upon the public charge policy that was in use from the late-1990s through the late 2010s, and that was consistent with longstanding public charge policy. This rule would clearly "effectuate a more faithful interpretation of the statutory concept" as compared to the 2019 Final Rule, which was responsible for a widespread chilling effect on families, including U.S. citizen children and other family members in mixed-status households. In implementing the 2019 rule, DHS ignored voluminous public policy data that organizations provided to the agency which clearly demonstrated the harmful effects it would have. As demonstrated by the last few years, immigrant populations were in fact hurt as a result. This rule would provide needed clarity and stability for immigrants and their families. However, there are some areas in which we believe the rule could be strengthened; these recommendations include some policy changes compared to the NRPM, and other areas in which we think the policy intended by the NPRM could be made more clear in order to provide the maximum possible reassurance to immigrants and their family members. We urge that you finalize a rule that includes our recommendations as soon as possible.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low-incomes. We understand that poverty in America is inextricably tied to systemic racism. Racial equity is our core value and informs all aspects of our organizational culture and the way we think about and approach our policy, issue, and advocacy areas. 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. We bring deep expertise in the difference that these programs make – or fail to make – in the lives of people with low incomes.

We appreciate that the NPRM recognizes that use of these supports should in no way be linked to the exclusionary “public charge” provision. Our immigration policies should not discourage immigrants and their family members from seeking physical or mental health care, nutrition, or housing benefits for which they are eligible. Clear, administrable regulations are needed so that immigrants, their families and anyone who provides them advice, whether immigration lawyers, public benefit caseworkers, or community-based organizations (CBOs), as well as the USCIS officers who implement the law can understand how a public charge assessment will be determined. This is particularly important because lack of clarity can cause the same damage as an overly broad rule. It can cause immigrant families to avoid interacting with the government and forgo critical public benefits for which they are eligible as a consequence of fear and confusion. These harms can extend outside of the receipt of public benefits, such as a domestic violence survivor forgoing police protection or a parent becoming fearful of seeking health care for their child.

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.¹ Many immigrants were afraid to seek health care, testing, vaccinations, or other supports for themselves or their family members, with sometimes tragic consequences. Recent evidence confirms that the chilling effect is still impacting many immigrant communities, even though USCIS stopped applying the 2019 rule in early 2021.² The ability to overcome a public health crisis like the COVID pandemic – and prevent the next one – depends on every individual being able to access testing, treatment, vaccinations, and other supports without fear or other restrictions.

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.

CLASP strongly supports the following elements of the proposed rule:

- Restores the historic definition of public charge as a person who “is likely to become primarily

¹ Juan Carlos Gomez and Vanessa Meraz, “Immigrant Families during the Pandemic: On the Frontlines but Left Behind,” CLASP, February 2021, available at: <https://www.clasp.org/publications/report/brief/immigrant-families-pandemic-frontlines/>.

² “Research Documents Harm of Public Charge Policy During the COVID-19 Pandemic,” Protecting Immigrant Families, January 2022, available at: https://protectingimmigrantfamilies.org/wp-content/uploads/2022/01/PIF-Research-Document_Public-Charge_COVID-19_Jan2022.pdf.

dependent on the government for subsistence,³ rather than taking into account even relatively minor use of benefits.

- Clear statement that in-kind benefits are not considered in the public charge assessment, including the in-kind benefits counted under the 2019 final rule: nutrition assistance under SNAP, health care under Medicaid, and housing assistance programs.
- Improved clarity on “receipt of benefits” including a specific statement that applying for benefits, being approved for benefits in the future, assisting another to apply for benefits, or being in a household or family with someone who receives benefits does not count as receipt of benefits. This reform is crucial to ensure the administrability of the public charge rule and to mitigate the “chilling effect” of the 2019 public charge policy, especially on U.S. citizen children in mixed-status households. Discussed below are recommendations on how this clarity could be extended.
- Updated language regarding groups that are exempt from a public charge determination, and clear statements that use of benefits while in such a status will not be held against immigrants even if they apply for permanent residency through a different pathway.
- A requirement for written denial decisions that “reflect consideration of each of the [required] factors” and “specifically articulate the reasons for the officer’s determination,” similar to a long-standing requirement in the 1999 field guidance.

Areas in which we believe DHS should make key improvements to the proposed policy:

- DHS should not consider the use of state, local, Tribal or territorial benefits in a public charge determination. Inclusion of such benefits adds to confusion, and undermines non-federal entities’ ability to protect the health, safety, and well-being of their residents.
- DHS should not consider use of Medicaid, even for institutional long term care, in a public charge determination. Having any type of Medicaid coverage included causes confusion and makes it far more difficult for state agencies, health care providers, and other organizations to communicate a clear message to immigrants and their families that it is safe to access health care.
- DHS should state that use of benefits as a child should not be included in a public charge determination, as this provides no evidence for future reliance on government programs; to the contrary, access to key supports by children has been shown to be associated with improvements to future economic outcomes.
- More broadly, DHS should develop a presumption that children cannot be a public charge, barring compelling evidence to the contrary.

We appreciate DHS’ interest in minimizing the chilling effect of the public charge rule. One key step that DHS should take, in addition to the changes discussed above, is to include in the regulatory text (not just the preamble) a non-exhaustive list of types and examples of cash or cash-like programs that are not considered in the public charge determination. This will reassure potential applicants for benefits and

³ See Department of Justice, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689, May 26, 1999, available at: <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>. (“It has never been Service policy that the receipt of any public service or benefit must be considered for public charge purposes.”). See also Historians’ comment FR 2018-21106 submitted to the 2018 NPRM by Torrie Hester, Hidetaka Hirota, Mary E. Mendoza, Deirdre M. Moloney, Mae Ngai, Lucy Salyer, and Elliott Young, available at: <https://www.regulations.gov/document?D=USCIS-2010-0012-5981>. While Congress did not use the term “primarily dependent,” the legislative history shows that a “public charge” was generally defined as an individual housed at a public charitable institution or likely to become an occupant of an almshouse.

reduce the burden on benefit granting entities and service providers to provide additional clarifications.

These recommendations are discussed in more detail below. Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Elizabeth Lower-Basch at elowerbasch@clasp.org to provide further information.

Detailed Comments

8 CFR § 212.21 Definitions

§ 212.21 (a) Likely at any time to become a public charge.

We agree with DHS that “primarily dependent” rather than a lesser level of dependence is the right standard. For more than 100 years, the interpretation of the public charge ground of inadmissibility remained consistent: a public charge for inadmissibility purposes is a person who “is likely to become primarily dependent on the government for subsistence.”⁴ A public charge determination was designed to be a narrowly focused tool and remained that way for more than a century. A comment detailing the legislative history of public charge by more than one hundred U.S. Representatives noted, “Congress has amended the statutory ground of inadmissibility several times since 1882, but it has never changed this longstanding primary meaning.”⁵ As the 2022 proposed rule recognizes, the public charge test was never designed to prevent immigration of low- and moderate-income families who may at some point need access to public programs to overcome temporary setbacks.⁶

§ 212.21 (b) Public cash assistance for income maintenance

⁴ See Department of Justice, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689, May 26, 1999, available at: <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>. (“It has never been Service policy that the receipt of any public service or benefit must be considered for public charge purposes.”). See also Historians’ comment FR 2018-21106 submitted to this NPRM by Torrie Hester, Hidetaka Hirota, Mary E. Mendoza, Deirdre M. Moloney, Mae Ngai, Lucy Salyer, and Elliott Young, available at: <https://www.regulations.gov/document?D=USCIS-2010-0012-5981>. While Congress did not use the term “primarily dependent,” the legislative history shows that a “public charge” was generally defined as an individual housed at a public charitable institution or likely to become an occupant of an almshouse.

⁵ U.S. Representative Nadler, Lofgren, and 106 others, “Comment in Response to Proposed Rulemaking on Inadmissibility on Public Charge Grounds,” December 10, 2018, available at: <https://www.regulations.gov/comment/USCIS-2010-0012-63036>.

⁶ As the 2019 Trump NPRM acknowledged, “the scope of the public benefits covered by the 2018 proposed rule was broader than under the longstanding administration of the public charge ground.” That is, the 2018 proposed rule departed from the historical understanding, reaffirmed by Congress in 1996, that a public charge is a person likely to rely primarily on cash assistance, not on in-kind services like health care, food or housing that promote a family’s well-being and stability. Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 5114, 51179 n. 425 (Oct. 10, 2018). Congress reaffirmed this when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as well as changes to public benefit eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Neither act, however, did anything to change the longstanding meaning of the public charge provision. PRWORA limited immigrant eligibility for certain means-tested federal benefits, but it did not modify or address the public charge ground of inadmissibility in any way. IIRIRA did modify the public charge statute in several ways, including by: (1) codifying the “totality of the circumstances” test that had developed through case law over the years; (2) requiring adjudicators to consider certain specific factors—age; health; family status; assets, resources, and financial status; and education and skills—when applying that test; and requiring legally enforceable affidavit of support, while limiting the categories of people who could provide such affidavits. IIRIRA act did not, however, affect the longstanding meaning of public charge. U.S. Representative Nadler, Lofgren, and 106 others, “Comment in Response to Proposed Rulemaking on Inadmissibility on Public Charge Grounds,” December 10, 2018, available at: <https://www.regulations.gov/comment/USCIS-2010-0012-63036>.

We strongly oppose the inclusion of State, Tribal, territorial, or local benefits, including programs providing cash assistance for income maintenance and recommend that they be removed from the regulatory text.

Programs funded by state and local government—including any cash assistance that they choose to provide—are an exercise of the powers traditionally reserved to the states. States and localities have a compelling interest in promoting health and safety, which includes their ability to provide benefits at their own expense without barriers caused by federal policies. The Attorney Generals of 19 states collectively commented on the public charge ANPRM advocating that any type of state cash assistance, whether filling a gap for people ineligible for TANF, or cash for specific, supplemental purposes, should not count in a public charge determination, stating: “The undersigned States are charged with safeguarding the public health and promoting the welfare of the people in their jurisdictions. To that end, States make independent public policy determinations, including with respect to providing public benefits to all individuals within their jurisdictions regardless of immigration status.”⁷ Counting programs provided by Indian tribes is particularly egregious, as it is a violation of tribal sovereignty and self-determination.

Inclusion of programs funded by states, localities, Tribes and territories also greatly increases the complexity of administering the public charge rule and of communicating what benefits it is and is not safe to access. By contrast, if such programs are not included, DHS could make a clear statement that the only programs that will be considered in the public charge determination are Supplemental Security Income (SSI) and cash assistance under Temporary Assistance for Needy Families program (TANF) (other than supplemental or special purpose cash benefits).⁸

The confusion about which programs can be considered in a public charge determination and which are excluded cannot be overstated. For example, we have received questions about whether receipt of a Paycheck Protection Act loan for a small business would be considered in a public charge determination. Immigration attorneys confronted with an array of State, Tribal, territorial, or local cash benefits programs will simply advise their clients not to use public benefits.

At FR 10613, DHS asks for comments on how, if at all, to clarify exclusions, like special purpose and earned-benefit cash assistance programs that would not be considered in a public charge in admissibility determination. The simplest approach would be for only named programs to be counted. Failing that, we strongly urge DHS to provide language in the regulatory text, and not only the preamble, which makes clear that many services and benefits are not considered under cash assistance for income maintenance.

We strongly recommend that the regulatory text explicitly exclude the following programs and provide a non-exclusive list of examples.

- State, tribal, territorial or local cash benefit programs for income maintenance (“General Assistance”)
- Special purpose cash (e.g., child care assistance, energy assistance such as LIHEAP, rental assistance, crime victim compensation/restitution)
- Financial assistance targeted to aid specific populations such as survivors of human trafficking or crime
- Disaster assistance such as Individual Assistance Under the Federal Emergency Management Agency’s (FEMA) Individuals and Households Program and other disaster assistance provided by state, Tribal,

⁷ State Attorney General’s Comment on Advance Notice of Proposed Rulemaking, “Public Charge Ground of Inadmissibility,” October 22, 2021, available at: <https://www.regulations.gov/comment/USCIS-2021-0013-0116>.

⁸ “‘Finally, We’re Being Recognized’: An Up-Close and Personal View of the Excluded Worker Fund,” Immigration Research Initiative and Urban Institute, March 17, 2022, available at: <https://immresearch.org/publications/finally-were-being-recognized/>.

territorial, or local governments

- Pandemic cash assistance such as federal, state, local, tribal or territorial cash assistance. Economic Impact Payments, state Pandemic Emergency Assistance Funds, Paycheck Protection Act assistance, or other types of public health relief payments
- Non-cash services under TANF and short-term non-recurring benefits under TANF as defined at 45 CFR 260.31(b)(1)
- Earned cash benefits (e.g., state unemployment insurance or similar programs, veterans' benefits, social security payments, Title II Social Security disability payments, government pensions)
- Tax-related benefits (e.g., child tax credit, earned income tax credit, economic impact payments, any other tax credit or reduction, and similar state or local programs)
- Programs that provide temporary, universal or "guaranteed" income to a targeted or selected group of people. The very nature of these programs is to raise the income of the community across the board and not to address individual needs or personal circumstances
- Programs that provide non-means tested payments such as the Alaska Permanent Fund Dividend or a broad stimulus payment provided outside of the tax system
- Loans or benefits provided to businesses rather than to individuals, such as small business loans or the Paycheck Protection Program (PPP).

Many, but not all of these categories are listed as not counted in the preamble of the 2022 NPRM at Fed. Reg. 10613. The additional categories will provide additional clarification and reassurance, and will prevent state benefit agencies, community-based organizations, immigration lawyers and others from having to guess at DHS' interpretation. Moreover, the clarity will also provide guidance to adjudicators who are not experts in public benefit programs and the many forms that they take. Including this information in the regulatory text will give it additional authority.

§ 212.21 (c) Long-term institutionalization at government expense

We strongly urge DHS to exclude institutionalization at government expense altogether from the definition of public charge for the reasons discussed in comments submitted by Justice in Aging and the National Health Law Program.

Including any Medicaid coverage causes confusion and contributes to the chilling effect. The best way to mitigate the chilling effect that has occurred is to exclude Medicaid full stop. Medicaid is the primary payer of long-term care in the U.S. and covers 6 in 10 nursing home residents.⁹ Many people living in the U.S. will one day rely on Medicaid for their long-term care needs.¹⁰ It is a significant challenge for entities conducting outreach and enrollment activities to effectively communicate how enrollment in Medicaid is not penalized under the public charge rule but use of a certain Medicaid benefit is negatively assessed. The current policy requires all informational materials about public charge to include an asterisk in the statement that "it is safe to receive Medicaid." This nuanced message – and the additional caveat that HCBS is not included in long-term institutionalization – would be difficult to communicate to anyone, but is particularly challenging to communicate to populations already facing language barriers.

⁹ Kaiser Family Foundation, *Medicaid's Role In Nursing Home Care*, 2017, available at: <https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>.

¹⁰ Cyiera Roldan, *Immigrants' Experience with Medicaid Enrollment: Challenges and Recommendations*, Immigrant Research Initiative, March 30, 2022, available at: <https://immresearch.org/publications/immigrants-experience-with-medicoid-enrollment/>.

Practically speaking, legal service providers, advocates, and community-based organizations will have to not only walk this communication tight-rope, but also clarify misinformation immigrants may have already received from other sources by the time they arrive at these organizations' offices. In a study conducted by the Center for Migration Studies that spanned from November 2020 to October 2021, one New York City Department of Social Services worker explained how difficult it can be to mitigate the chilling effect arising from misinformation about public benefits:

"A lot of times, by the time we see a client, the client has been to three, four different places already. ... If they're being told different things from those three, four places that they've been to before they come to you, what you say to them just falls to the wayside, because it's just something else that someone else is saying. ... If you're speaking to all of these people and you're being told three different things, you don't trust what you're being told."¹¹

Including any form of Medicaid coverage in public charge determinations will introduce confusion for immigrants and have measurable chilling effects. Qualitative and quantitative research on benefit enrollment among immigrant populations¹² has repeatedly shown that when eligible immigrants are unsure if they can access Medicaid safely, they will forgo it altogether,¹³ even at a great personal cost to themselves and their families.¹⁴

Due to their unique positionality at the intersection of many marginalized identities (e.g., nationality, gender, race, etc.), immigrant women are more likely to live in poverty than either immigrant men or the native-born population.¹⁵ Unsurprisingly, immigrant women are also more likely to rely on Medicaid than immigrant men and more likely to be uninsured than U.S.-born women. Therefore, including any part of Medicaid coverage in public charge inadmissibility determinations will likely produce a chilling effect that will disproportionately harm women. After the 2019 public charge rule, health centers reported a drop in Medicaid enrollment and healthcare utilization by pregnant women, despite the fact that they were categorically exempted from the rule change.¹⁶

DHS attempted to carve out testing, treatment, and vaccination for COVID-19 while the 2019 public charge rule was in effect. That experience shows the limitations of attempting to explain complicated healthcare and immigration policies. Despite publications of a USCIS Policy Manual and an alert box on the USCIS website seeking to clarify that testing, treatment, and vaccination related to COVID-19 would not be considered as part

¹¹ Daniela Alulema and Jacquelyn Pavilon, *Immigrants' Use of New York City Programs, Services, and Benefits: Examining the Impact of Fear and Other Barriers to Access*, Center for Migration Studies, January 2022, available at: <https://cmsny.org/publications/nyc-programs-services-and-benefits-report-013122/>.

¹² Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, and Dulce Gonzalez, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Institute, June 2020, available at: <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>.

¹³ 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, available at: <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2021.00059>.

¹⁴ Rebecca Gale, "Legal Counsel: A Health Care Partner For Immigrant Communities," *Health Affairs*, August 2021, available at: <https://doi.org/10.1377/hlthaff.2021.00059>.

¹⁵ Jeanne Batalova, "Immigrant Women and Girls in the United States," *Migration Policy Institute*, March 2020, available at: <https://www.migrationpolicy.org/article/immigrant-women-and-girls-united-states-2018>.

¹⁶ Jennifer Tolbert, Samantha Artiga, and Olivia Pham, "Impact of Shifting Immigration Policy on Medicaid Enrollment and Utilization of Care among Health Center Patients," *Kaiser Family Foundation*, October 2019, available at: <https://www.kff.org/medicaid/issue-brief/impact-of-shifting-immigration-policy-on-medicare-enrollment-and-utilization-of-care-among-health-center-patients/>.

of public charge inadmissibility determination, there remained persistent widespread fear that prevented many immigrants and their family members from seeking medical care, often with tragic consequences. Surveys by state-based¹⁷ and national organizations¹⁸ found that many immigrant families did not access medical treatment for COVID-19, even when sick, because they were concerned about immigration consequences. Similarly, families avoided pandemic-specific programs despite reporting that cash, food, and employment were the most pressing needs during the pandemic. The best way to ensure that people are not afraid to access health care is to be able to provide a clear, concise statement that receiving government-funded health care or insurance will never have negative immigration consequences for immigrants or their family members.

If DHS decides to include long-term institutionalization in the public charge rule, we support the proposed clarification in the regulatory text that imprisonment for conviction of crime or institutionalization for short periods of time for rehabilitation purposes do not count and that only Medicaid § 1905(a) institutional services count. We also strongly support the explicit clarification in the preamble that Medicaid home- and community-based services (HCBS) do not count and recommend that DHS include this clarification in the preamble to the final rule as well as subregulatory guidance and policies for adjudicating officers to follow.

While we support the clarification that past institutionalization is not itself alone to be determinative, we recommend that DHS amend the final rule to clarify that only current long-term institutionalization be considered. The fact that a person was institutionalized in the past does not suggest a likelihood of future institutionalization. Past institutionalization may reflect a medical issue that has since been resolved, a lack of access to community-based services that have since been provided, a lack of access to accessible housing, or any number of other factors that make future institutionalization unlikely. Access to HCBS varies greatly by state and even within states, as well as by disability and age. Also, states and the federal government are investing in HCBS, increasing access. Thus, community-based support that was not available 5 years ago or today, may very well be available in the future.

We appreciate DHS's consideration of how to incorporate the injustices of the Medicaid program's institutional bias and potential violations of civil rights into the public charge test. As discussed previously, many Americans with disabilities and older adults who want to and can be supported to live in the community simply do not have access to Medicaid HCBS and are forced into institutions to get the help they need with self-care and daily living. We recommend that in directing adjudicators to take into account any evidence that past or current institutionalization is in violation of Federal law as part of the totality of the circumstances, that such evidence only be used in favor of an applicant. Similarly, adjudicators should be directed not to assume that the lack of evidence that the applicant's past or current institutionalization violates federal law means institutionalization was voluntary or lawful.

§ 212.21 (d) Receipt of public benefits

DHS should maintain the narrow definition of "receipt" of countable benefits suggested in the proposed rule and make three recommended changes to provide even greater ease of administration and mitigation of the

¹⁷ Marion Davis, et. al., *The Impact of COVID-19 on Immigrants in Massachusetts: Insights from our Community Survey*, Massachusetts Immigrant & Refugee Advocacy Coalition, August 2020, available at: <https://www.miracoalition.org/wp-content/uploads/2020/08/MIRA-COVID-19-survey-report-Aug2020.pdf>.

¹⁸ Hamutal Bernstein, Jorge Gonzalez-Hermoso, Dulce Gonzalez, Jahnavi Jagannath, "Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis" Urban Institute, August 2020, available at: <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.

chilling effect, especially on children in mixed immigration status households.

Section 212.21(d) of the Proposed Rule defines what constitutes “receipt” of public benefits. There are two parts to the definition. First, the regulation provides affirmatively that what qualifies as receipt is the intending immigrant themselves being “listed as a beneficiary” by a “public benefit-granting agency” for one of the types of benefits considered as part of the public charge assessment as defined in section 212.21 subsection (b) (public cash assistance for income maintenance) and subsection (c) (long-term institutionalization at government expense). Second, the definition is careful to specify the types of relationships to government benefits that do not constitute “receipt.”

The proposed regulation states specifically that intending immigrants who are subject to public charge will not be deemed to be in “receipt” of the countable public benefits based on (1) **having applied** for such benefits (on their own or on behalf of another); (2) **being approved** for benefits (for themselves or other) that are to be provided in the future; (3) **actually receiving the benefits** where the benefits are received on behalf of another; and (4) **assisting another to apply for benefits** that are ultimately received by that person. As stated in the first part of the definition, the only receipt that counts is the intending immigrant being named as a beneficiary for one or more of the countable benefits themselves.

We welcome these clarifications as helpful to mitigating the chilling effect of public charge. This is especially crucial for mixed immigration status families, as children are generally not able to apply for benefits on their own behalf. Adults must generally fill out applications, have benefits deposited into their accounts, and make purchases on behalf of their eligible children. Despite the fact that the final 2019 rule only applied to a small percentage of noncitizens, many families chose to forgo critical benefits on behalf of their children for which they were eligible. For example, uninsured rates among Latinx children increased for the first time in a decade in 2017, at least in part because parents were afraid to access health care for their children.¹⁹ In a 2019 survey, less than 20% of adults in immigrant families who were surveyed knew that their children’s enrollment in Medicaid would not be considered in their parent’s public charge determination.²⁰

Many non-citizens have a relationship to either the countable public benefits or a long list of non-countable benefits that is distinct from receipt as defined in the proposed rule. They may receive benefits but on behalf of a family member, often a dependent child, without being the named “beneficiary” as required by the rule. This is a relatively common situation – in the most recent year for which TANF data are available, over 10% of all households receiving TANF benefits were “child-only” cases in which an ineligible immigrant parent was excluded from the assistance unit.²¹ Many more such households are likely eligible but have not applied for benefits due to fear of public charge or broader immigration concerns. Non-citizens may also have applied for benefits, not realizing that they were ineligible, and/or applied and withdrawn their application, all without having received any benefits in a manner that would count under the proposed definition.

In addition, the clarity in this respect provides clear guidance to reviewing officers and reduces the opportunity

¹⁹ Kelly Whitener, Steven Lopez, Lauren Roygardner, and Matthew Snider, *Decade of Success for Latino Children’s Health Now in Jeopardy*, Georgetown University Center For Children And Families and UnidosUS, April 2020, available at: <https://www.unidosus.org/publications/2039-decade-of-success-for-latino-childrens-health-now-in-jeopardy/>.

²⁰ Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute, May 2020, available at: <https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019>.

²¹ Administration for Children and Families, *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2020*, available at: <https://www.acf.hhs.gov/ofa/data/characteristics-and-financial-circumstances-tanf-recipients-fiscal-year-2020>.

for inconsistency or bias based on race, national origin, sexual orientation, gender identification, and disability status

We also recommend three changes to provide even greater ease of administration and mitigation of the chilling effect. *First*, the first part of the definition should state specifically that *issuance* of the actual benefit or provision of the service is essential to the definition of receipt. *Second*, the second part of the definition should include some additional rules as to what does not count as receipt. *Third*, the definition should explicitly include a non-exclusive list of examples of what does not count as receipt against the intending immigrant.

1. **Add issuance or provision of service to the first part of the definition.** The first part of the definition should include actual issuance of the countable benefit (or service in the event that long-term institutional care is included) to the affirmative definition. Right now, it only includes being named as a beneficiary by the relevant benefits administering agency. It is only when you get to the rules in the second part of the definition that it is made clear that simply being approved or certified for receipt of benefit at some point in the future is not enough; actual issuance or provision of service is required. On occasion, state benefits agencies inaccurately approve an immigrant to receive benefits that they are actually ineligible for based on income, immigration status, or another reason. Legal services attorneys advise them to affirmatively withdraw from the benefit program. However, some people may not even know that they were determined eligible for a program and this should not count against them in a public charge determination. In addition, there is often a single-application for multiple benefits programs and an individual may not be aware that s/he was determined eligible to one of the programs included in the application. This language should go up front for the sake of clarity.
2. **Add additional rules as to what is not counted as receipt to the second part of the definition.** While the second part of the definition is helpful, we recommend that additional rules as to what is not countable as receipt be included. For example, the list should state outright that an intending immigrant who is not eligible for a particular countable benefit will not be considered to be in receipt of that benefit themselves, even if another person in their household receives it or they are listed as a member of the household by the benefits granting agency. The second part of the definition should also include common words that do not necessarily equate to receipt, such as "payee" or "representative payee," "head of household," receipt "on behalf of," Finally, the second part of the definition should contain rules pertaining to government-funded long-term institutional care (in the event that long-term institutional care is included), including that approval for such care without being the resident of the designated care facility does not count.
3. **Add a non-exclusive list of examples of what does not count as receipt of benefits by an intending immigrant as part of the regulatory text.** A non-exclusive list of examples of what does not count as receipt of benefits should be included to further eased administration of the rule and mitigate the chilling effect. For example, the list should include "child only" TANF cases; and also "serving as the representative payee" for someone under the SSI program.

8 CFR § 212.22 Public charge inadmissibility determination

§ 212.22(a) Public charge inadmissibility determination, factors to consider

§ 212.22(a)(1) Factors to Consider and § 212.22(a)(2) Consideration of Affidavit of Support

In general, we support DHS's proposed language at § 212.22(a)(1) that simply acknowledges the statutory language and § 212.22(a)(2) that elects not to define the five factors, but rather favorably considers the affidavit of support.

Any effort to define the five statutory public charge factors would necessarily result in a far more complicated and discretionary determination and one that is both unnecessary and potentially harmful. Rather than applying a discrete analysis based on the sponsor's financial status and current income, it would redirect the focus onto the applicant. Consular and USCIS officials would be required to juggle a variety of factors that have little relationship to the applicant's qualifying for specific federal cash assistance programs at a time well into the future when they might theoretically become eligible to receive them. Applicants and the practitioners who represent them—as well as those who are adjudicating these applications—need to maintain the less burdensome test that is currently being applied.

While we are generally supportive of the totality of the circumstances framework proposed in the NPRM, we recommend that DHS set out an additional criterion for applying this standard to children. DHS should develop a presumption that children should not be determined to be a public charge based on normal childhood experiences including being dependent on their families and, not having earnings, barring compelling evidence to the contrary.

Moreover, the fact that a child is young or receives assistance today, is not an indication about the person's ability to earn income, or contribute to a household or community in the future. Children's receipt of TANF says nothing about their future economic status, only that their parents have low incomes. And many children receive SSI as infants 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.²²

To the contrary, research has repeatedly shown that low-income children who receive assistance are more likely to experience long-term benefits such as greater educational attainment, higher future earnings,²³ and even increased brain activity.²⁴ 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

²² Social Security Administration, "2016 Annual Report of the SSI Program," available at: https://www.ssa.gov/oact/ssir/SSI16/V_D_Redet_CDRdata.html#389380.

²³ Arloc Sherman and Tazra Mitchell, "Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find," Center on Budget and Policy Priorities, July 2017, available at: <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over>.

²⁴ Sonya V. Troller-Renfree, Molly A. Costanzo, Greg J. Duncan, et al., "The impact of a poverty reduction intervention on infant brain activity," *Psychological and Cognitive Sciences* 119, no.8, 2022, available at: <https://doi.org/10.1073/pnas.2115649119>.

standardized test scores by 6% of a standard deviation.²⁵

In the preamble to the NPRM, DHS notes that it “remains particularly concerned about the potential effects of public charge policy on children,” but cannot apply an “exemption” or “exclude from consideration any of the congressionally established statutory minimum factors.” To be clear, our recommendation is not that DHS ignore the statutory factor of age; we recommend that DHS positively interpret the statutory factor of age.

§ 212.22(a)(3) Consideration of current and or past receipt of public benefits

We support the statement that receipt of benefits *alone* does not make someone likely to become a public charge. HHS agrees with this statement and recently indicated that “receipt of cash assistance does not necessarily mean that an individual is primarily dependent on the government.”²⁶

DHS should only consider current receipt of benefits in a public charge determination. Receipt—past or present—of public benefits is not one of the statutory factors that adjudicators must consider when determining the likelihood of becoming a public charge. Individuals who received benefits in the past and no longer receive them have experienced a change in circumstances that may make them unlikely to need benefits in the future. In addition, focusing on the present use of benefits helps ensure that people in a temporary crisis or vulnerable situation can secure stability and safety for their families without fear that it will count against them in assessing their likelihood of becoming a public charge in the future. To the extent that an individual is currently receiving benefits, the applicant’s receipt should be weighed against other factors, including eligibility restrictions on further receipt upon being granted LPR status.

If past receipt of benefits is considered at all, we strongly recommend that the officer consider whether the assistance was used by survivors of domestic violence, serious crimes, disasters, an accident, or by pregnant or recently pregnant persons, children, etc. That is, if the benefits were used to overcome hardships caused by a temporary situation that no longer applies, it does not predict whether the individual is likely to rely on that assistance in the future.

Further, we strongly recommend that Form I-485 be amended once the rule is finalized to only ask about benefits that can be taken into consideration in the public charge determination. Form I-485 currently asks the applicant to indicate receipt of any “public assistance in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment)” and whether the applicant is likely to receive it in the future. Such a request is overly broad and seeks information that is irrelevant to whether the applicant is likely to become primarily dependent on the government for subsistence. The inquiry should be limited to only the specific benefits and timeframe included in the final rule. Such limitation would help prevent speculation by officers into irrelevant facts and improper discrimination against those who received or are receiving necessary services for which they are eligible.

§ 212.22(a)(4): Disability alone is not sufficient

DHS must be careful when considering the applicant’s health conditions or financial status to avoid violating section 504 of the Rehabilitation Act. A large percentage of adults have a disability or chronic health condition.

²⁵ 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, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208322/pdf/nihms-330900.pdf>.

²⁶ Deputy Secretary of Health and Human Services, “Letter to Secretary Mayorkas,” February 16, 2022, available at: <https://www.regulations.gov/document/USCIS-2021-0013-0206>.

Any consideration of these characteristics in a negative light risks disqualifying applicants based on their disability. Imposing such a penalty—either directly or indirectly—would violate Section 504 of the Rehabilitation Act, which bars such discrimination. USCIS adjudicators are not trained in measuring the severity and impact of such health factors on the applicant’s future earning potential. Applicants whose health conditions are recorded as a Class B certification by the civil surgeon performing the medical screening should be able to overcome any public charge concerns with presentation of a legally sufficient affidavit of support. Health factors that do not give rise to such a certification should be disregarded.

§ 212.22(b) Public charge inadmissibility determination, totality of the circumstances

DHS should retain the proposed language regarding the term “totality of the circumstances,” where no one factor other than an insufficient affidavit of support, if required, should be the sole criterion for determining whether the applicant is likely to become a public charge.

DHS should not change the initial evidence that adjustment of status applicants currently must provide with the Form I-485. Nor do we recommend that any new questions be added to the form with respect to the five statutory factors. We strongly recommend that the I-485, at Part 8, Questions #61 and #62, inquire only about the specific public benefits that are relevant to a public charge determination. The open ended question about “public benefits” creates unnecessary work for applicants, adjudicators, and state benefit granting agencies as applicants may feel compelled to collect and report information on any benefit they have received, including those such as SNAP and Medicaid that are not considered in a public charge determination. This open ended question also adds to the chilling effect, as it creates uncertainty about what information is being required and how it will be used.

§ 212.22(c) Public charge inadmissibility determination, denial decision

DHS should retain the proposed language requiring every denial decision to be in writing, reflect consideration of each of the five statutory factors, as well as the affidavit of support, and articulate a reason for the determination.

The similar and long-standing requirement in the 1999 field guidance, which was altered in the 2019 final rule with no reasonable explanation and in conflict with § 8 C.F.R. 103.3(a)(1)(i), should be reinstated. Such a policy is critical to the equitable implementation of the public charge standard, because evidence shows that the accuracy increases when evaluators are accountable. This practice will reduce the risk that the adjudicator is applying the wrong standard and will require the adjudicator to justify the decision. It will also be helpful to the applicant seeking any reopening or reconsideration of the denial. Similar safeguards have been put in place regarding cases that are denied on the basis of an unfavorable exercise of discretion. This policy will make officers less likely to make erroneous decisions rooted in implicit bias and will create written records that allow DHS to investigate patterns of bias, intentional or not. DHS must take this step to counteract the legacy of racism, xenophobia, and other forms of discrimination in the U.S. immigration system.

We recommend that DHS improve this policy by conforming it to our recommendation above that DHS apply a heightened standard for a finding that a child is a public charge. DHS could accomplish this by specifically referencing the standard for children in the regulation or otherwise clarifying in the preamble to the final rule that “consideration of each of the factors” in § 212.22(a) includes consideration of and “specifically articulating” reasoning for the heightened standard for children.

§ 212.22(d) Receipt of benefits while in exempt immigration category does not count

We support the policy that benefits received while in an exempt status will not be considered in an adjudication to which the public charge ground of inadmissibility applies, with three suggested recommendations for improvement. This, together with parallel protections in §212.22(d) for certain refugee categories, will go a long way toward combating the chilling effect against the use of benefits by immigrants to whom public charge inadmissibility does not apply, including those exempted from benefit eligibility restrictions by Congress in the 1996 federal law, PRWORA. This provision, which was also included in the 2019 public charge rule, should be maintained here.

DHS should include immigrants granted withholding of removal/deportation among those for whom benefits received while in such status may not be considered under §212.22(d). Because this provision by its terms applies only to the categories of immigrants listed in the exemptions provision, §212.23(a), and because withholding of removal/deportation is neither listed as a category nor listed explicitly in §212.23(a)(29), the exemption catch-all, we recommend that the final rule be amended to expressly include such immigrants. Ideally, DHS should add language to the text of §212.23(a)(29), such as, e.g., a clause at the end of the sentence as follows: "such as individuals granted withholding of removal under 8 U.S.C. §1231(b)(3)." Alternatively, DHS should add a final clause at the end of §212.22(d) such as: "or was present in the United States pursuant to a grant of withholding of removal under 8 USC §1231(b)(3)." Noncitizens who are granted this humanitarian form of relief and who are "qualified" immigrants for federal and state benefits eligibility purposes²⁷ should not be denied adjustment because they received those benefits in a status that is identical in all meaningful respects to that of refugees, asylees and other categories of immigrants treated like refugees because of similar conditions such as violence or an urgent need for humanitarian protection.²⁸

Extending to withholding beneficiaries the same protections accorded to similarly situated individuals under §212.22(d) ensures parity of treatment among vulnerable groups and also reduces the chilling effect that may result from confusion when immigrants associate asylum and withholding, given that DHS and EOIR use a single form to apply for both statuses.²⁹

DHS should provide benefits-receipt protection for immigrants who receive state or locally funded cash benefits, if those are retained in the final rule, by ensuring that §212.22(d) applies to categories of lawfully present immigrants to whom public charge inadmissibility grounds are inapplicable. This protection should apply not only to those listed expressly in §212.23(a)(1)-(28) but to all those who should be considered included within the exemption catch-all, §212.23(a)(29) or who are otherwise protected under §212.22(d). In addition to withholding discussed above, the statuses to be clarified for these purposes should include asylum applicants and immigrants granted parole, Deferred Enforced Departure (DED), DACA and other forms of deferred action, and suspension of deportation/cancellation of removal, as well as applicants for these and the listed categories.

Protecting immigrants who qualify for limited state and local cash benefit programs against public charge consequences that should not apply to them will help prevent the chilling effect on immigrants who need such

²⁷ 8 U.S.C. § 1641.

²⁸ See *Immigr. and Naturalization Serv. v. Stevic*, 467 U.S. 407 (1984); *Immigr. and Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

²⁹ U.S. Citizenship and Immigr. Serv., Instructions for Application for Asylum and Withholding of Removal (Form I-586). OMB No. 1615-0067. Expires July 31, 2022. Available at: <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf>.

programs to avoid poverty while supporting state efforts to reduce poverty, including among people of color.³⁰ Some state and local cash benefit programs have eligibility criteria that are broader than the federal “qualified” immigrant definition and include the statuses we recommend should be clarified.³¹ Providing protection against adverse consideration of such benefits for as many applicable categories of immigrants as possible within the bounds of the law would ameliorate the chilling effect that undermines the goals of such programs. This approach would simplify public charge policy, so that immigrants, advocates and adjudicators are not relegated to making determinations about the same statuses over and over again in individual cases.

In addition, DHS should provide guidance in the preamble or USCIS Policy Manual to clarify that the circumstances that allowed a protected immigrant to secure a benefit covered by §212.22(d) may not be taken into negative consideration in a public charge determination. The language of §212.22(d) is unambiguous in its directive that the benefits “will not be considered;” what is less clear is whether adjudicators may consider the underlying reasons for which the immigrant received the benefit, as when a TPS beneficiary or other protected immigrant receives a benefit because of a trauma-induced disability that temporarily prevents them from working, or is an abused child too young to work, for example. Agency guidance is warranted to ensure that application of this vital provision will be meaningful.

³⁰ Benefits use promotes health outcomes and stronger families, positioning the next generation of children in immigrant families – often U.S. citizens – to advance socioeconomically. See Arloc Sherman and Tazra Mitchell, *Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find*, Center on Budget and Policy Priorities, July 17, 2017, available at: <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over>. Because poverty and unequal access to wealth falls hardest on people of color, and a large portion of immigrants are people of color, removing access barriers can prevent intergenerational poverty among these populations and reduce racially unequal access to wealth over the long run. See Angela Hanks, Danyelle Solomon, & Christian Weller, Ctr. for Am. Progress, *Systematic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap*, February 2018, available at: <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>; Tamara Draut, Catherine Ruetschlin, & Amy Traub, Inst. for Assets & Soc. Pol’y - Brandeis University, *The Racial Wealth Gap: Why Policy Matters*, 2015, available at: <https://www.demos.org/research/racial-wealth-gap-why-policy-matters>; Lisa J. Dettling, Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, & Jeffrey P. Thompson, Fed. Res., *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances*, September 2017, available at: <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm>; Danilo Trisi and Matt Saenz, *Economic Security Programs Reduce Overall Poverty, Racial and Ethnic Inequities*, Center on Budget and Policy Priorities, July 1, 2021, available at: <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-reduce-overall-poverty-racial-and-ethnic>; Neil Bhutta, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, September 2020, available at: <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>; Ana Patricia Muñoz, et al., *The Color of Wealth in Boston*, March 2015, available at: <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx>.

³¹ See, for example, 106 C.M.R. § 703.440, a Massachusetts state program that incorporates the judicially crafted “permanently residing in the U.S. under color of law” standard from cases like *Holley v Levine*, 553 F.2d 845 (2d Cir. 1977) and *Cruz v. Comm’r of Pub. Welfare*, 395 Mass. 107, 115, 478 N.E.2d 1262 (1985); it also specifically recognizes deferred action grantees and applicants for asylum or other statuses, among others, as eligible. See also “Citizenship and Alien Status for State Cash Programs,” Washington State Department of Social and Health Services, updated June 15, 2012, available at: <https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/citizenship-and-alien-status-state-cash-programs>; This eligibility manual and administrative code ([WAC 388-424-0015](https://www.wa.gov/wac/388-424-0015)) from Washington state make assistance available to non-qualified immigrants who meet state residence requirements, as well as survivors of trafficking or serious crimes; other non-immigrants and undocumented are ineligible. Similarly, Maine issued general assistance guidance clarifying that lawfully present individuals, including DACA recipients, and asylum applicants, may receive General Assistance; see Sara Russell, “Letter to Municipalities providing General Assistance: General Assistance Rule 22 - Access for Certain Non-Citizens,” Maine Department of Health and Human Services, October 24, 2019, available at: <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/GA%20Rule%2022A%20Guidance.pdf>.

§ 212.22(e) Benefits for refugee-like group

We support this provision, which protects immigrants from public charge consequences for any benefits received at any time in the past if the immigrant is eligible for resettlement assistance, entitlement programs, and other benefits typically reserved for refugees, without regard to whether the immigrant has been granted refugee/asylum status. The protection appropriately applies not only to survivors of trafficking and Afghan Special Immigrant Visa holders or evacuees, but to other humanitarian immigrants who are eligible for these benefits. This provision will provide these vulnerable populations with safer access to the benefits they may need to recover from the conditions that qualified them for humanitarian protection.

8 CFR § 212.23 Exemptions and waivers for public charge ground of inadmissibility

We support this provision with respect to the listing of 29 categories of immigrants to whom the public charge ground of inadmissibility does not apply, including those listed in the rescinded 2019 DHS public charge rule and the additional categories, and we make two recommendations for improvements to this rule. A comprehensive list can simplify communications with protected immigrants about public charge issues, reduce an unintended “chilling effect” against their use of benefits, and make statutory and regulatory public charge provisions more meaningful in practice.

We further urge DHS to strengthen the scope of protection provisions for vulnerable immigrants in exemption categories (18)-(21) by adding the clauses recognizing that the exemption attaches regardless of adjustment pathway, currently contained only in categories (18) & (19), to categories (20) & (21) and by removing the extra timing requirements in categories (18)(ii) and (19)(ii). Clarify that the catch-all exemption category, (29), includes statuses protected against application of public charge criteria for reasons other than an express INA §212(a)(4) exemption, such as by adding language to §212.23(a)(29) that enumerates or describes them, or adding language to the preamble that supplies such clarification and can be incorporated into a policy manual or other guidance.

8 CFR § 245.23 Adjustment of aliens in T nonimmigrant classification.

We support the amendments in 245.23, which align with DHS’ addition in section 212.18, and appropriately references “applicable” provisions, versus “other” provisions of section 212(a).

Crosscutting: Use of “Alien”

We urge DHS to remove the term “alien” from the preamble and regulatory text of the public charge rule and replace it in the preamble and the regulatory text with “noncitizens.” A recent Policy Memorandum from the Executive Office for Immigration Review (EOIR), directs EOIR staff to use language that is “consistent with our character as a nation of opportunity and of welcome.” In this memo, EOIR suggests the following language to replace “alien:” respondent, applicant, petitioner, beneficiary, migrant, noncitizen, or non-U.S. citizen.³² Although this does not directly apply to regulatory language, we encourage USCIS to take advantage of this revision of the regulations to use more modern and inclusive language.

³² Jean King, U.S. Department of Justice, Executive Office of Immigration Review, “Policy Memo to Clarify the agency’s use of terminology regarding noncitizens”, available at: <https://www.justice.gov/eoir/book/file/1415216/download>.

Recommendations regarding outreach and coordination with federal agencies, states and localities

DHS requests public comment about ways to shape public communications about the final rule that mitigate chilling effects, including ways to communicate the limited benefits considered, the totality of the circumstances test, and the categories of noncitizens who are exempt from the public charge determination.³³ We appreciate DHS's awareness of the importance of a clear and fair public charge rule, its commitment to ensuring that the rule does not cause confusion to immigrants and their families, and the steps DHS has already taken, in partnership with other federal agencies, to communicate that the 2019 public charge rule is no longer in effect.³⁴

However, much work remains to communicate these important changes and build trust so that immigrant families are better able to access critical benefits for which they are eligible, and secure lawful permanent residence, especially once the proposed rule is finalized. As DHS acknowledges, the 2019 public charge rule created fear and confusion that deterred eligible immigrants from receiving health, nutrition, and housing assistance programs. Results from a recent survey conducted by the Protecting Immigrant Families coalition indicate a strong need for increased and continued outreach on public charge to communities.³⁵ Mixed status immigrant families are still hesitant to apply for public assistance programs in fear of jeopardizing their or their loved ones' immigration statuses. The survey found that 3 out of 4 (75%) respondents surveyed did not know of the public charge policy reversal, and 41% continued believing that applying for assistance programs could cause immigration problems.

However, 50 percent of respondents said that knowledge about changes to public charge would make them more likely to use safety net programs when necessary, highlighting the importance of continued outreach to immigrant communities about changes to the policy.³⁶ The ways that DHS communicates the final rule resulting from this NPRM creates the opportunity to rebuild trust with immigrant communities, support access to critical benefits, and help our country get back on track after the COVID-19 pandemic. It is critical to communicate that under the new rule, families can use health care, food, education, job training and school assistance without immigration consequences, and that benefits received by children will not affect a family member's immigration status or applications.

DHS should include all families in its outreach and education efforts, including families with non-citizen children. In the NPRM, DHS states that it "welcomes comments on how to communicate to parents of U.S. citizen children that the receipt of benefits by such children would not be considered as part of a public charge

³³ 87 Fed. Reg. 10592, 10615.

³⁴ *Public Charge Resources*, U.S. Citizenship and Immigration Services, Department of Homeland Security, updated November 17, 2021, available at: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>; *Public Charge Interagency Letter*, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, updated November 16, 2021, available at: https://www.uscis.gov/sites/default/files/document/legal-docs/USCIS_Public_Charge_Interagency_Letter_11.16.21.pdf; *Public Charge and Safeguarding Beneficiary Information*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, updated July 22, 2021, available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/cib072221.pdf>. *Joint Letter on Public Charge 2022*, U.S. Department of Agriculture, Food and Nutrition Service, January 5, 2022, available at: <https://www.fns.usda.gov/snap/joint-letter-public-charge>.

³⁵ "Immigrant Mixed Status Families: Toplines Summary," Protecting Immigrant Families and BSP Research, December 8, 2021, available at: <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/12/PIF-Poll-Toplines-Memo-FINAL-1-1.pdf>.

³⁶ *Public Charge was Reversed, But Not Enough Immigrant Families Know*, No Kid Hungry, December 2021, available at: <https://www.nokidhungry.org/blog/new-report-shows-fear-immigrant-communities-kept-children-getting-food-they-needed>.

inadmissibility determination for the parents.” However, both U.S. citizen children and non-citizen children have been detrimentally impacted by the false belief that a child’s use of benefits would have immigration consequences for their parent or family members. Non-citizen children have access to some federal and state public benefit programs, and it is important that their family members also understand that a child’s use of those benefits will not have immigration consequences for the family member.

DHS, in partnership with benefits granting agencies, should launch an interagency campaign to clearly communicate the new public charge rule in multiple languages. This would include the Department of Health and Human Services (regarding TANF), the Department of Agriculture (regarding the federal nutrition programs), the Social Security Administration (regarding Social Security and Supplemental Security Income), the Department of Housing and Urban Development (regarding federal housing programs, including those that had been included in 2019 final rule), the Department of Education (regarding student loans, adult and higher education program, and other adult educational benefits), the Department of Labor (regarding unemployment, workforce development, and worker’s compensation benefits), the Federal Emergency Management Assistance (regarding disaster relief benefits), and the Department of Treasury (regarding tax credits such as the Earned Income Tax Credit, Child Tax Credit, and all COVID-19 relief payments). For children in particular, it is important that agencies work together to ensure that the campaign reaches families with children in trusted spaces where they receive services like schools and early education centers.

This campaign should include updates to agency websites, similar to the public charge webpage that DHS currently has, explaining the new rule, the difference between the new rule and the 1999 guidance, and the new rule’s limited applicability to benefits programs. These websites must be available in multiple languages and have clear links to translated versions in the upper righthand corner of the webpage. Additionally, DHS and benefits-granting agencies should create co-branded materials and provide training for state benefits agencies, immigrant-serving organizations, and outreach partners so that their personnel have updated and accurate information about the new public charge rule. DHS and partner agencies should share responses to questions received from the field and use those to further refine training and outreach materials. Given research that immigrant communities trust TV news,³⁷ social media, friends, family, and government officials for information, federal agencies should also launch a public relations campaign using all of these mediums, including social media and ethnic media, to explain the new public charge rule.

This should also include branded letters that distinguish SSI and TANF from other “cash-related” programs that their agency oversees.³⁸ “Message Testing” focus groups with immigrant families in California indicated that the “double validation” of seeing benefits on a “safe list” and not on a “risky” list was reassuring to immigrant families. These letters should be on letterhead and posted on DHS’s public charge resource page and should be updated annually if new programs are developed. It would also be helpful for DHS and HHS to provide individual letters to each state with its specific TANF program name or a template that states could modify with their specific TANF program names.

DHS and benefits granting agencies should support states and services providers by creating materials specifically for families in multiple languages. States and community groups who work directly with families must be given accessible, multilingual outreach materials suited to their populations and their ways of

³⁷ Ibid.

³⁸ Vision Strategy and Insight, *Message Testing to Combat Public Charge’s Chilling Effect in California*, The California Health Care Foundation, March 2020, available at: <https://www.chcf.org/wp-content/uploads/2020/03/MessageTestingCombatPublicCharge.pdf>.

interacting with their clients. These materials must consider the ways that families best receive information and communicate key messages about the public charge rule and be available in multiple forms that are concise and in language that is easy to understand. There should also be opportunities for families to provide their feedback on outreach materials to evaluate if current outreach strategies are properly reaching families and implement changes on language, communications, and outreach as necessary.

DHS should provide funding to trusted community organizations that can provide outreach and education to immigrants and their families.³⁹ Research also shows that community-based (CBOs) organizations are trusted sources of information for immigrant families.⁴⁰ DHS should provide funding for these organizations so that trusted community leaders can share information about the new public charge rule directly to families and in public settings like in the media and on a one-on-one basis. HHS recently announced outreach grants available to a wide range of organizations, including community health workers and parent mentors, to connect eligible people to Medicaid or CHIP under the grants.⁴¹ Community Health Workers and *promotores* are trusted members of the community who reflect the cultural, linguistic, ethnic, racial and other identities of the communities they serve and through this trusted relationship are able to effectively share important information and facilitate access to services. DHS could provide similar grants for organizations to educate people about the final public charge policy. We also encourage federal agencies to work with national organizations that can regrant federal funds to CBOs quickly and without many of the constraints that prevent CBOs from applying for federal dollars.

In addition, it would be extremely helpful to provide grants that are not restricted to a specific program, but that allow CBOs to help immigrants and their family members access the broad range of basic need programs. Currently, most grants come from one agency and are restricted to helping people apply for specific programs, such as SNAP or Medicaid. Given the overlap in eligibility between benefit programs, joint grant initiatives between federal agencies would provide states and/or community-based organizations the ability to focus on multiple benefit programs with one funding source. Since the hardest part of outreach work is building trust, it doesn't make sense for multiple organizations to attempt to contact the same people over and over. Cost-allocation across grant programs often is extremely challenging for small CBOs.⁴²

³⁹ *Lessons Learned: Community-Based Organizations Area Key to Immigrant Medicaid Enrollment*, Immigrant Research Initiative, March 30, 2022, available at: <https://immresearch.org/wp-content/uploads/Lessons-Learned.pdf>.

⁴⁰ Vision Strategy and Insight, *Message Testing to Combat Public Charge's Chilling Effect in California*, The California Health Care Foundation, March 2020, available at: <https://www.chcf.org/wp-content/uploads/2020/03/MessageTestingCombatPublicCharge.pdf>

⁴¹ Maggie Clark, "Outreach for Pregnant People Included in Latest CMS Grant Funding Opportunity," Georgetown Center for Children and Families, February 22, 2022, available at: <https://ccf.georgetown.edu/2022/02/22/outreach-for-pregnant-people-included-in-latest-cms-grant-fund/>.

⁴² Suzanne Wikle, *Recommendations to Increase Program Participation by Coordinating Outreach and Enrollment Opportunities*, CLASP, September 10, 2021, available at: <https://www.clasp.org/publications/report/brief/recommendations-increase-program-participation-coordinating-outreach-and/>.