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Re: Interim Final Rule: Visas: Ineligibility Based on Public Charge Grounds, [Docket No. DOS-2021-0034](#)
and RIN: 1400-AE87

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

Dear Ms. Lage:

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment again on the Department of State's (DOS)'s interim final rule, "Visas: Ineligibility Based on Public Charge Grounds," originally published on October 11, 2019 and reopened for comment on November 17, 2021. **We strongly recommend that DOS issue rulemaking as soon as possible to remove the text of DOS's October 2019 rule from the Code of Federal Regulations (CFR); and restore the longstanding regulatory text that appeared prior to DOS's October 2019 rule.**¹

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 rules 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 the Department of Homeland Security (DHS) and DOS have both stopped

¹ 22 C.F.R. § 40.41 (2018), available at: <https://www.govinfo.gov/content/pkg/CFR-2018-title22-vol1/pdf/CFR-2018-title22-vol1-chap1-subchapE.pdf>

applying the 2019 rule.² Therefore, it is essential that the DOS adopt 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. The regulatory text that was in place prior to 2019 meets this standard.

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, about 700,000³ out of a total of 1 million⁴—are subject to the public charge ground of inadmissibility. Over the next decade, the public charge test could directly affect an estimated 7 million people, shaping our family-based immigration system.

We strongly recommend that DOS issue rulemaking as soon as possible to remove the text of DOS's October 2019 rule from the CFR and restore the longstanding regulatory text that appeared prior to DOS's October 2019 rule. We suggest this approach because: 1) the chilling effect of the 2019 Trump public charge policy persists, and the current DOS policy landscape is confusing for immigrants and their family members; 2) the regulations prior to DOS's October 2019 rule set out a clear and fair policy that worked well for decades; and 3) DOS's October 2019 rule mirrors the discriminatory policy that was found unlawful and vacated by a federal court.

1. DOS should remove the text of DOS's October 2019 rule from the CFR as soon as possible because the chilling effect of the Trump public charge policy persists and the current DOS policy landscape confuses immigrants and their family members, causing them to avoid seeking health care and other critical services during the COVID-19 pandemic.

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.⁵
- 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

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

³ 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>.

⁴ 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>.

⁵ 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>.

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.⁶

- 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.⁷
- 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 that the announcement of the public charge regulations was associated with a decrease in Medicaid enrollment of approximately 260,000 children from 2017 levels.⁸
- 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.⁹
- 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).¹⁰
- 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.¹¹

Since the COVID-19 pandemic 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

⁶ 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>.

⁷ 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

⁸ 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>.

⁹ 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>.

¹⁰ 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.

¹¹ 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

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 2020.¹²

- 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 a chilling effect at 42.3%. This group of respondents would have been more likely than other immigrant families to be affected by the public charge rule.¹³
- 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.¹⁴
- 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 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.¹⁵
- 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.¹⁶
- In a longitudinal study that ran from January 2018 to March 2021, Children's Health Watch interviewed the caregivers of young children and found that while the likelihood of household food insecurity went up 40% during the COVID-19 pandemic for households with U.S.-born mothers, households with immigrant mothers saw their likelihood more than doubling (2.2 times). Households with U.S.-born mothers were 2.2 times more likely to be behind on rent than before the pandemic, but households with immigrant mothers were 4.1 times more likely. Households with immigrant mothers were significantly more likely to miss out on benefits from SNAP and Economic Impact Payments than households with U.S.-born mothers (24.5% vs. 3.9%).¹⁷

¹² 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.

¹³ 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.

¹⁴ 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>.

¹⁵ 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.

¹⁶ Hamutal Bernstein, Jorge Gonzale, Dulce Gonzalez, 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>.

¹⁷ Children's Health Watch. "[A Bulwark Against the Storm: The unequal impact of COVID relief policies on families with young children.](#)" September 2021.

Research and providers report that immigrants are afraid to access medical treatment for COVID-19 specifically 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.¹⁸
- 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.¹⁹
- In September 2021, with support from No Kid Hungry, the Protecting Immigrant Families coalition (PIF) fielded a poll of 1,000 mostly Latinx and AAPI individuals in immigrant families. This poll found that nearly half (46%) of families who needed assistance during the COVID-19 pandemic abstained from applying due to concerns about the possible implications for their immigration status or that of their family member(s). Two in five respondents (41%) polled continued to believe that "applying for assistance programs could cause immigration problems." Comparatively, only one in four (25%) did not believe that seeking assistance would cause immigration problems. AAPI communities are particularly likely to lack clarity on how public charge rules affect immigration status. Finally, the poll reveals that communicating policy changes clearly makes a difference; learning that the public charge rule has changed and that it is safe to use health and nutrition programs, made respondents 50% more likely to apply for assistance when needed.²⁰
- 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."²¹
- 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.²²

¹⁸ 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>.

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

²⁰ Protecting Immigrant Families (PIF), "[Public Charge was Reversed— But Not Enough Immigrant Families Know.](#)" Research conducted by BSP Research. December 2021.

²¹ [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.

²² Ibid.

- 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.²³

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

- 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.²⁴
- 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.²⁵
- 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.²⁶

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.²⁷
- 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."²⁸

²³ Ibid.

²⁴ 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.

²⁵ Ibid.

²⁶ The Baltimore Sun, "[Building Community trust essential to COVID vaccine acceptance](#)" December 2020.

²⁷ 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.

²⁸ Caroline Simon, Roll Call. "[Immigrants crucial to vaccinating US, but gaps remain](#)". June 2021.

- 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.”²⁹ 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.”³⁰
- 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.”³¹
- 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.³² Further, across the country, a California advocate warned the Fresno Bee that 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.”³³

The current DOS policy landscape confuses immigrants and their families, causing them to avoid accessing health care during the COVID-19 pandemic. Although DOS’s 2019 public charge rule is blocked by a preliminary injunction, it remains DOS’s official policy in the C.F.R. On March 15, 2021, DOS revised the Foreign Affairs Manual (FAM) to align with the Immigration and Naturalization Service’s (INS’s) 1999 Field Guidance (“1999 Field Guidance”), which is the operating policy for DHS as well. Having a policy in the regulatory text that is different from the one being implemented in the 2021 FAM and the 1999 Field Guidance is confusing for immigrants and their families, as well as for immigration attorneys, benefit granting agencies and others who advise immigrants.

2. Restore the regulations that were in place prior to DOS’s October 2019 rule, which provided a clear and fair policy for decades.

Immigration practitioners have noted that for 20 years before DOS made changes to the FAM on January 3, 2018, the State Department’s public charge policy and practice was clear and sound.³⁴ In practice, consular officials relied on the National Visa Center (NVC) to conduct a technical review to determine whether the affidavit of support form was complete, and the consular officer then decided whether the individual was admissible – based on an adequate affidavit of support. If not, the officer could request additional evidence or an affidavit of support from a joint sponsor.³⁵ The pre-2018 FAM also considered the five statutory factors set out in INA § 212(a)(4)(B) and noted that an intending immigrant “who must have Form I-864, Affidavit of Support Under Section 213(A) of the Act, will generally not need to have extensive personal resources available unless considerations of health, age, skills, etc.,

²⁹ Megan Carney & Terea Mares, Civil Eats. “[Op-ed: How the Pandemic Made it Harder For Immigrants to Access Food](#)”. April 2021

³⁰ 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

³¹ Michael Ollove, Stateline. “[Enrollment in Health Insurance Lags Among Latino Children.](#)”. June 2021

³² Lizzie Kane & Lautaro Grinspan, The Atlanta Journal-Constitution. “[Pandemic brings more hardships for Georgia’s unauthorized immigrants](#)”. July 2021

³³ 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

³⁴ Charles Wheeler, Catholic Legal Immigration Network, Inc., State Department Redefines Public Charge Standard, January 29, 2018. Available at: <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/state-department-redefines-public-charge>.

³⁵ Charles Wheeler, Catholic Legal Immigration Network, Inc., State Department Redefines Public Charge Standard, January 29, 2018. Available at: <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/state-department-redefines-public-charge>.

suggest the likelihood of his or her ever becoming self-supporting is marginal at best. In such cases, of course, the degree of support that the alien will be able and likely to provide becomes more important than in the average case.”³⁶ The FAM then identified each of the five factors (health, age, skills, etc.) and indicated when they should be considered.

The regulatory language prior to DOS’s October 2019 rule supported these consular practices. The regulations stated that individuals can be denied an immigrant visa if they failed to fulfill the affidavit of support requirement, failed to provide an additional affidavit of support by a joint sponsor when needed, or could provide confirmation of written employment or post a bond to remove a public charge concern. This policy is consistent with the statutory requirements. 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 was recognized by the U.S. Court of Appeals for the Seventh Circuit. This history is also 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.”³⁷ 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.³⁸ 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.³⁹

This policy was easy for immigration lawyers to explain to their clients and helped overcome the chilling effect and confusion that had been caused by the lack of clarity after the 1996 legislation. In the rulemaking that led to the 2019 rule, DOS failed to provide any evidence of harm caused by the previous policy.

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 DOS implemented a similar policy based on changed to the Foreign Affairs Manual 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.⁴⁰

³⁶ Catholic Legal Immigration Network, Inc., Comments in Response to Interim Final Rulemaking: Visas: Ineligibility Based on Public Charge Grounds, DOS-2019-0035 and/or RIN: 1400-AE87, November 12, 2019, available at: <https://www.regulations.gov/comment/DOS-2019-0035-0159>.

³⁷ USCIS, *Adjudicator’s Field Manual*, Section 20.5(k)(7), <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm20-external.pdf>.

³⁸ Charles Wheeler, State Department Redefines Public Charge Standard, CLINIC, January 2018, <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/state-department-redefines-public-charge>.

³⁹ U.S. Department of State, *Foreign Affairs Manual*, 9 FAM 302.8 (U), <https://fam.state.gov/fam/09fam/09fam030208.html>.

⁴⁰ 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-idUSKCN1RR0UX>.

3. DOS's October 2019 rule mirrors the discriminatory policy that was found unlawful and vacated by a federal court.

The Biden administration's January 20, 2021 Executive Order on racial equity requires federal government agencies, including DOS, to promote equitable delivery of government benefits and equitable opportunities for all.⁴¹ The public charge provisions have a long discriminatory history, and therefore it is essential to put in 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. 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."⁴² 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.⁴³ 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, 1882,⁴⁴ three months after it had passed the Chinese Exclusion Act.⁴⁵ 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.⁴⁶

DOS's October 2019 rule is a discriminatory policy shown to have a disparate impact on people who are Latinx. When DOS revised the FAM in 2018 and implemented a public charge test very similar to DOS's 2019 rule, denials increased dramatically and were concentrated among many people of color. The number of public charge denials increased dramatically, four-fold from 3,206 in 2017 to 12,972 in 2018.⁴⁷ In addition, the increase in denials was concentrated among people from Mexico. 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 public

⁴¹ 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/>.

⁴² *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-IXsleii&sig=Lyr85eEdyMmz42df37RARAdZrjs&hl=en&sa=X&ved=2ahUKewiNycr-vvzeAhVpp1kKHziODKgQ6AEwAnoECAMQAQ#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>.

⁴³ 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>.

⁴⁴ 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>.

⁴⁵ Immigration Act of May 6, 1882, 22 Stat. 58, https://www.law.cornell.edu/wex/chinese_exclusion_act.

⁴⁶ 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.

⁴⁷ Declaration of Jennifer L. Van Hook, Professor of Sociology and Demography at the Pennsylvania State University, in *Make the Road New York v. Michael Pompeo*, Case No. 1:19-cv-11633-GBD Document 45-10 Filed 01/21/20.

charge grounds.⁴⁸ Expert declarations filed in *Make the Road v. Pompeo* also indicated that people from Mexico and Central American countries are much more likely to be at risk of being deemed inadmissible under the DOS's 2019 public charge rule than people who are white.⁴⁹

In addition, DOS's 2019 rule is virtually identical to DHS's 2019 public charge rule which was found unlawful and vacated in *Cook County v. Wolf*.⁵⁰ After the court vacated the DHS 2019 rule, DHS issued an interim final rule to remove it from the CFR. As a result, it is no longer DHS's policy either in regulatory text or in practice. While DHS undertakes further rulemaking, the 1999 Field Guidance remains in effect. DOS should not leave the discriminatory and unlawful 2019 rule in the CFR for a future administration to possibly attempt to revive.

We urge DOS 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., or other circumstances have made it difficult for them to complete an education, secure professional credentials, or earn a high income.

Conclusion

In conclusion, CLASP recommends that DOS move as expeditiously as possible to issue rulemaking on public charge. The constantly changing public charge policies have led to confusion among immigrants and their families, contributing to the chilling effect. Restoring the public charge regulations that were in place before the 2019 rule, as we have recommended here, is the best way to limit this harm.

Our comments include citations to research and documents for the benefit of DOS 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 Juliana Zhou at jzhou@clasp.org if you have any questions or need any further information.

⁴⁸ Ibid.

⁴⁹ Declaration of Jennifer L. Van Hook, Professor of Sociology and Demography at the Pennsylvania State University, in *Make the Road New York v. Michael Pompeo*, Case No. 1:19-cv-11633-GBD Document 45-10 Filed 01/21/20.

⁵⁰ *Cook County v. Wolf*, November 2, 2020, Case: 1:19-cv-06334.