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

Submitted via www.regulations.gov

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

We are writing on behalf of the Shriver Center on Poverty Law (Shriver Center) and Legal Council for Health Justice (Legal Council) in response to the Department of Homeland Security's ("DHS" or "the agency") advance notice of proposed rulemaking (ANPRM) published on August 23, 2021. The Shriver Center and Legal Council strongly support repealing the public charge ground from all federal immigration laws, but, specifically addressing this ANPRM, we urge DHS to define public charge in a manner that least disrupts access to healthcare and other meaningful benefits and services.

For over fifty years, the Shriver Center has worked to ensure that all families have access to vital resources and programs that provide for their basic needs and advance their long-term well-being and opportunity. Through our decades of work on behalf of and in partnership with low-income and immigrant communities in Illinois, we have developed deep expertise in several key life areas that would be implicated by any new public charge regulation, including healthcare, nutrition, housing, and employment. We play a leadership role in the national anti-poverty community and our expertise is enhanced through our work with organizations throughout the country on issues related to past and future public charge regulations.

The Shriver Center deeply believes that policies and laws that create and perpetuate poverty and racial inequity are written into the fabric of our nation. They are complex, rooted in institutions, structures, and systems in every state. For that reason, people experience poverty differently based on their race and other identities, but all are denied dignity and freedom by institutional barriers designed to harm certain groups while advantaging others. The Shriver Center's goal is to build a future free from racism, poverty, and the interlocking systems designed to keep those inequities alive. From litigating and shaping policies in Illinois, to training and convening multi-state networks of public interest attorneys, the Shriver Center works with and for the communities we serve to make equal justice and economic opportunity a reality.

At Legal Council, we serve people impacted by chronic, disabling, and stigmatizing health conditions through three medical-legal partnership programs. We provide specialized, free legal services in cooperation with health and community providers to maximize access to good health, education, and a responsible safety net. We provide services without restrictions based on immigration status. We also conduct significant outreach, education, and training to our health and social service partners and directly to the communities we serve on legal issues related to government services, accessing healthcare and coverage, and chronic and serious illness.

Together with other partners and co-counsel, the Shriver Center and Legal Council represented the Illinois Coalition for Immigrant and Refugee Rights, Inc. (ICIRR) in its challenge to the 2019 Rule¹ brought in the U.S. District Court for the Northern District of Illinois (Case No. 19-cv-06334). We are familiar with the public charge statute and the far-reaching consequences of any public charge regulation.

Preamble

Before delving into the questions raised by the ANPRM, we begin by noting our strong support for Congress immediately repealing the federal laws that provide for and address the public charge test. Repeal is the most just outcome for several reasons.

First, public charge has xenophobic and racist roots that continue to cause significant harm to immigrant communities, particularly for immigrants of color. Today's laws around public charge can be traced back to the laws of colonies and early states, where the practice of excluding poor immigrants first appeared.² In 1835, Congress began to consider a federal policy of excluding public charges, but federal legislation did not come until nearly five decades later when xenophobia ran rampant in the United States.³ In May 1882, in response to widespread racism against Chinese laborers, Congress enacted the Chinese Exclusion Act, the first major law restricting voluntary immigration to the United States. Within a few months, in this same xenophobic environment, Congress passed the Immigration Act of 1882, where the term "public charge" first made its appearance in federal law. In the time since, public charge has been unevenly applied, with the burden falling most heavily on immigrants of color.⁴ As a result, public charge has reaffirmed a culture and system of white supremacy that the federal government must reckon with.

Second, public charge is steeped in profoundly harmful ableism. The 1882 Act prohibited the landing of "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge."⁵ Subsequent immigration laws in the early 1900s also sought to stop the immigration of

¹ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019) ("the 2019 Rule").

² Joseph Daval, *The Problem with Public Charge*, 130 Yale L. J. 998, 1008 (2021).

³ *Id.* at 1009 fn. 56 (citing Roger Daniels, *Coming to America: A History of Immigration and Ethnicity in American Life* 270-72 (1990)).

⁴ During the Great Depression, for example, while southern and eastern European immigrants and Mexican immigrants made significant use of public benefits, it was the Mexican immigrants who were scrutinized for their public benefits use and subsequently subject to mass removals based on public charge. The World, Public Charge Rule has History of 'Racial Exclusion,' Says Immigration Historian (Aug. 14, 2019), <https://www.pri.org/stories/2019-08-14/public-charge-rule-has-history-racial-exclusion-says-immigration-historian>.

⁵ Immigration Act of 1882, ch. 376, § 2, 22 Stat. 214.

disabled individuals, such as those with “any mental abnormality,” and reflected the contemporary eugenics movement of the early 19th century.⁶ Public charge has historically reinforced stereotypes of disabled individuals as societal burdens rather than contributors to society, thus placing the onus of change onto individual behavior and absolving the federal government of its responsibility to make necessary improvements to systems and structures for people with disabilities.⁷

Third, public charge is incompatible with the modern system of public benefits and is therefore outdated and obsolete.⁸ Whereas the federal benefits system exists to help support the well-being of individuals, families, communities and states, the purpose of public charge has been construed to exclude and penalize those who receive such benefits. So long as public charge is in effect, this tension will deeply frustrate the ability of benefits-granting agencies to provide the services for which immigrant families and communities are legally eligible. As the pandemic has shown, the chilling effect on access to benefits such as health insurance, nutrition assistance, and income supports impacts not only immigrant households, but also the public health and economic recovery of broader communities. This country cannot afford to maintain the ‘public charge’ grounds when it is in direct conflict with the best interest of our individual, communal, and economic health.

Finally, the practice of excluding immigrants based on their economic status is wholly inconsistent with the vision of the United States as a land of opportunity where everyone can achieve the American Dream. Like the history of public charge, the history of the United States is fraught with racism, ableism, and xenophobia – and yet, past need not be prologue. The federal government has an important opportunity to correct course by repealing public charge and removing any consideration of public benefits use from immigrant enforcement. To achieve justice for *all*, Congress should immediately repeal public charge.

The following comments are largely directed in response to the ANPRM’s “Questions for the Public” included several times in section “III. Request for Information.” Below are the ANPRM’s questions and Shriver Center and Legal Council’s responses.

III. Request for Information

A. Purpose and Definition of Public Charge

2. Questions for the Public

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

DHS should define as a public charge for inadmissibility purposes a person who is “likely to become primarily and permanently reliant on the federal government—i.e., not reliant on their sponsor, their own income and resources, or their household’s—to avoid destitution.”

The definition must:

⁶ Kevin Ryu, *Authorizing Ableism*, J. of Politics and International Affairs (Dec. 10, 2020), <https://www.jpianyu.org/archive/2019/12/10/authorizing-ableism>.

⁷ *Id.*

⁸ See generally Joseph Daval, *The Problem with Public Charge*, 130 Yale L. J. 998 (2021).

- Embrace the role of the sponsor and affidavit of support for those immigrants required to submit such;
- Not penalize any public benefits use; and
- Only find immigrants inadmissible if they are determined to be likely in the future to rely on the federal government to such an extent that the reliance is permanent, primary, and total, meaning the use of the benefits is necessary to avoid destitution.

This definition is consistent with the plain language of the Immigration and Nationality Act (INA) as well as the origins and purpose of the statute, an important consideration when conducting rulemaking.⁹

The public charge provision of the INA does not require immigrants to demonstrate their admissibility by already having in hand at the time of admission, all the resources required to live in the richest country in the world. To require that would allow only wealthy immigrants to come to our shores and make family unity—a hallmark of the INA for over 50 years—a possibility only for the rich, and the American Dream an historical artifact. Instead, the INA and its 1996 amendments show that Congress decided to err on the side of permitting a low-income immigrant’s admission, based on the sponsors’ contractual obligation to repay, to permit family unification, and to keep the promise of America as a land of opportunity.

In 1996, PRWORA Addressed Immigrant Public Benefits Use Such that ‘Public Charge’ Need Not Address Benefits Use At All.

Congress spoke to immigrant public benefit use through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).¹⁰ Through PRWORA, Congress set a new national policy for receipt of cash assistance and other public benefits, limiting this aid overall. PRWORA re-structured benefits eligibility to require that use of public benefits, by either citizens or immigrants, be merely supplemental and temporary and that it support work, training, and education.¹¹ Specifically, PRWORA imposed new work requirements as a condition of receipt for Supplemental Nutrition Assistance Program (SNAP) food benefits and cash aid through Temporary Assistance for Needy Families (TANF), instituted a five-year lifetime limit on cash aid, and required disability reexaminations at age 18 for children receiving Supplemental Security Income (SSI), among other changes. PRWORA codified these and other changes to existing law all in furtherance of a domestic national policy encouraging “self-sufficiency” -- but was careful to be clear that reliance on sponsors *is* self-sufficiency,¹² and use of the benefits for which an immigrant is eligible *is* self-sufficiency as well.¹³

PRWORA also amended the INA (“the PRWORA Amendments”¹⁴) to newly deny legal immigrants (except refugees and other categorical exemptions) many of the federal public benefits previously available to them until the immigrant has spent five years in the United States in Lawful Permanent Resident (“LPR”) status (the “five-year bar”).¹⁵ This time period aligns with the public charge

⁹ See *Bankers Life & Cas. Co. v. United States*, 142 F.3d 973, 983 (7th Cir. 1998).

¹⁰ Pub. L. No. 104-193, § 400, 110 Stat. 2105 (1996).

¹¹ *Id.*

¹² 8 U.S.C. § 1601(2)(A) (1996).

¹³ *Id.* at (5).

¹⁴ Pub.L. 104-193, Title IV, § 400, 110 Stat. 2260 (1996) (codified at 8 U.S.C. §§ 1601; 1611-1615; 1621-1622; 1631-1632; 1641-1645 [hereinafter “PRWORA Amendments”]).

¹⁵ Pub.L. 104-193, Title IV, § 400, 110 Stat. 2105 (1996) (codified at 8 U.S.C. § 1613(a)).

deportability language within the INA; i.e., the statutory five-year period during which an LPR may be deported on the grounds of being a public charge.¹⁶ In this way, the PRWORA Amendments to the INA do the work of ensuring that federal sources will not be the primary sources by which an immigrant avoids destitution during the five years made relevant by the deportability statute, thereby addressing public charge.

In 1996, PRWORA and IIRIRA Reworked the Sponsorship Provisions So An Immigrant With an Appropriate Sponsor Is Not A Public Charge.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) built upon the recently enacted PRWORA by amending sponsorship obligations to be more specific about a sponsor's financial obligation: the sponsor must agree to financially support the immigrant above the poverty line.¹⁷ Under IIRIRA, the sponsor must agree to maintain their sponsored immigrant at an income of no less than 125% of the federal poverty line, and demonstrate their ability to maintain that income.¹⁸ IIRIRA also required that immigrants who seek to immigrate to the United States based on their family ties obtain affidavits of support.¹⁹ This includes not only family-sponsored immigrants but also certain employment-based immigrants whose employer is a relative.²⁰ Congress amended the obligations of a sponsor as the means to ensure an immigrant cannot become a public charge; instead of even possibly having to rely on the federal government, the immigrant will -- through enforceable contract -- rely upon their sponsor.

IIRIRA Does Include “Public Benefits” In the Public Charge Analysis.

IIRIRA amended the public charge provision of the INA, explicitly listing the affidavit of support as a factor in the public charge test for applicants, and conspicuously not including any reference to “public benefits.”²¹ Thus, the agency must follow the plain language of the provision when defining public charge, which means not including consideration of “public benefits” under the “assets, resources, and financial status” prong.²²

Any Public Charge Definition Must Work Within the Existing PRWORA, IIRIRA, and INA Statutory Framework.

Congress both directly and indirectly addressed public charge concerns by amending the INA through PRWORA and IIRIRA to ensure that immigrants cannot be primarily dependent on the government, even absent additional public charge regulation. Congress limited the federal benefits that immigrants can receive, restricted sponsorship to only those sponsors it concluded were economically capable of supporting an immigrant, and made that sponsor's promise an enforceable legal contract, requiring reimbursement to the government for any means-tested public benefits the immigrant may receive.

Regardless of the individual wealth an immigrant has at the time of their application, or their health, age, or other factors, the updated provisions of the INA after PRWORA and IIRIRA ensure that they will

¹⁶ 8 U.S.C. § 1227(a)(5).

¹⁷ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, tit. V, § 551(a), 110 Stat. 3009-546, 3009-675 (Sept. 30, 1996) (codified at 8 U.S.C. § 1183a(a)).

¹⁸ IIRIRA § 551(a) (codified at 8 U.S.C. §§ 1183a(a)(1)(A); 1183a(f)(1)(E); 1183a(f)(6)).

¹⁹ See IIRIRA § 531(a)(4)(C)(ii) (codified at 8 U.S.C. § 1182(a)(4)(C)(ii)).

²⁰ *Id.* § 531(a)(4)(D) (codified at 8 U.S.C. § 1182(a)(4)(D)).

²¹ IIRIRA § 531(a)(4)(B)(i)-(ii) (codified at 8 U.S.C. § 1182(a)(4)(B)(i)-(ii)).

²² 8 U.S.C. § 1182(a)(4)(B)(IV).

not—because they **cannot by statute**—depend on the public fisc for primary support. These amendments to the INA are the statutory means by which Congress “achiev[ed] the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.”²³ Congress’s schema for public charge thus works in concert with other long-standing of policy goals of the INA—family unity and a competitive U.S. workforce—but prevents immigrants from depending primarily on government support. It is Congress’s prerogative to reconcile these issues of national policymaking around immigration and welfare, and any future public charge rulemaking must tread lightly and work within these constraints.

The agency is not writing upon a blank slate when it seeks to define ‘public charge.’ The agency must ensure that any proposed definition fits within the existing statutory framework. Under the proposed definition above, likelihood of future reliance on the federal government to avoid destitution would be considered met if the immigrant has a sponsor who meets the statutory factors and has executed an affidavit of support. The other five statutory factors must be considered only in the absence of an affidavit of support, or with an affidavit that does not meet the statutory requirements. This will keep the public charge exclusion narrow and its application uniform, consistent with congressional intent.

Our proposed definition fits much better with this statutory scheme than more recent iterations of public charge. The 2019 Rule’s test ignored Congress’s balanced approach in favor of broad inadmissibility. The 2019 Rule’s definition of “public charge” considered any benefits an immigrant might conceivably be eligible for during their life, including time periods well beyond the period with which Congress was concerned (i.e., Congress decided an immigrant could be deported for public charge up to five years after entry.)²⁴ The agency must tread lightly upon public charge to promulgate a rule that fits this statutory scheme, is not contrary to law, and is neither arbitrary nor capricious.

Our proposed narrow definition helps avoid confusion as well. Please see our response to Question A-3 below.

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

We recommend a definition of public charge that achieves the following:

- **Keep ‘public charge’ narrow and focus on the affidavit of support where required, and the other five statutory factors only where the affidavit is absent or inadequate.** Predicting who is likely to become a public charge “at any time in the future” by looking at the statutory factors is an act of mere speculation that could allow immigration officers to discriminate, consciously or not, based on personal views of benefits programs, disability, or race/ethnicity. The best way to ensure consistent administration and fairness is to direct to the affidavit of support and ensure it meets the statutory requirements, and, lacking that, to look at the other five factors (age; health; family status; assets, resources, and financial status; education and skills) to cure any public

²³ 8 U.S.C. § 1601(7).

²⁴ 84 Fed. Reg. at 41,397.

charge concerns. An applicant with an affidavit of support that meets the statutory requirements is not a public charge.

- **To avoid the chilling effect, do not tie the likelihood of becoming a public charge to past, current, or future benefits use.** Research revealed that 21% of potentially undocumented Hispanic adults said they did not apply for or stopped participating in a program to help with food, 12% assistance for housing, and 11% a health care program, due to immigration-related fears.²⁵ The chilling effect from the 2019 Rule was well-documented and destructive, and its repeal has not been enough to counteract its chilling effects.²⁶ Predicting who is likely to become a public charge “at any time in the future” based on future anticipated public benefits use is always going to be an act of speculation--speculation that could, as a practical matter, be fueled by the mere fact of future eligibility rather than desire or need. Because applicants will know that the test is based on this speculation, they will continue to have a strong incentive to refuse supports and benefits regardless of the factual relevance to their immigration status. This invites confusion and is unavoidable so long as public charge is tied to any public benefits.

Ensuring that caregivers and/or parents can enroll their families in the benefit programs for which they are eligible without fear is also an important societal goal. These programs were often created to help families adjust to new circumstances such as a child being born, a reduction in work hours to care for children, and the ability to take advantage of opportunities to meet long term career goals. Moreover, children in households where parents lack access to critical benefits suffer the loss of income and other assistance that could support their healthy development. For example, research shows that if parents are uninsured, children are more likely to also be uninsured,²⁷ and therefore the whole family is at risk of untreated illness, lost workdays, unpaid bills, and medical bankruptcy. In contrast, when parents can access benefits, their children are

²⁵ Samantha Artiga et al, KFF, *Health and Health Care Experiences of Hispanic Adults* (July 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/health-and-health-care-experiences-of-hispanic-adults/>. *Immigrant Families Continued Avoiding the Safety Net during the COVID-19 Crisis*, Urban Institute, Hamutal Bernstein, Michael Karpman, Dulce Gonzalez, and Stephen Zuckerman, (February 2021), <https://www.urban.org/sites/default/files/publication/103565/immigrant-families-continued-avoiding-the-safety-net-during-the-covid-19-crisis.pdf>. *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Institute, Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, Dulce Gonzalez, (June 18, 2020), <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>. *Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*, Migration Policy Institute, Randy Capps, Michael Fix and Jeanne Batalova, (Dec. 2020), <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

²⁶ Yun K, Montoya-Williams D, Wallis K, Hume M, Drummond S, La Rochelle C, Rosenquist R, *Addressing the Unique Needs of Immigrant and Limited-English-Proficient Communities During the COVID-19 Pandemic*, (Feb. 2021), Children’s Hospital of Philadelphia PolicyLab, <https://policylab.chop.edu/policy-briefs/addressing-unique-needs-immigrant-and-limited-english-proficient-communities-during>.

²⁷ Georgetown University Health Policy Institute Center for Children and Families, *Health Coverage for Parents and Caregivers Helps Children* (2017), <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Covering-Parents-v2.pdf>.

also more likely to benefit as well.²⁸ Research also demonstrates a strong link between a child's health outcomes and their parents', and therefore it is critical that parents are not deterred from applying for health care and nutrition assistance due to immigration concerns.²⁹ It is important that immigrant families can access benefit programs without fear of immigration consequences.

- **Explicitly exclude programs funded completely by state, local, tribal, and territorial governments.** DHS should clarify that state or local government funded programs—even if they provide cash assistance—are exercises of the powers traditionally reserved to the states and are not counted as factors in a federal immigration law test. This approach significantly reduces the administrative burden on states and other local governments who otherwise must provide documentation to and answer the questions of immigrants and their families about a broad patchwork of state, local and tribal programs --either to meet federal demands for documentation on applicants or to reduce the chilling effect--so that state and local policy can be meaningfully implemented. States and localities have a compelling interest in promoting health and safety that includes providing benefits at their own expense without barriers caused by federal policies. Since these benefits vary significantly by state, specifically excluding all benefits—including state and local benefits-- will make the public charge rule easier for both immigrants and DHS adjudicators to understand.

Illinois provides several exclusively-state-funded medical and nutrition programs focused on the state's noncitizen population. For instance, effective January 1, 2018, foreign-born victims of trafficking, torture, or other serious crimes, and their derivative family members, may qualify for exclusively state-funded medical, cash, and food assistance under the Survivor Support and Trafficking Prevention Act³⁰ –commonly known as the "VTTC program." Additionally, noncitizens age 65 and older who have an immigration status that makes them ineligible for traditional Medicaid may qualify for the exclusively-state-funded Health Benefits for Immigrant Seniors (HBIS) program.³¹ Illinois's public benefits agencies and their respective offices as well as individuals applying for VTTC or HBIS programs should not have to spend time deliberating whether enrollment in this program is penalized in the federal public charge rule or providing documentation about use or non-use of these programs to green card applicants. Explicitly excluding state-funded programs would greatly lessen the risk of confusion and reduce the cost to the state for diverting extra staff hours to answering public charge questions, as well as prevent worse health and nutrition outcomes in the state.

- **In addition to excluding the applicant's use of benefits, explicitly exclude family members' and sponsors' use of benefits.** Make clear that benefits used by an applicant's family members or sponsors do not count as factors in the applicant's public charge test. This is critical in minimizing the chilling effect of the public charge rule on access to benefits by people, including

²⁸ Hudson J, Moriya A, *Medicaid Expansion For Adults Had Measurable 'Welcome Mat' Effects On Their Children*, Health Affairs, Vol 36 No. 9 (2017). <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347>.

²⁹ David Murphey, Samuel Beckwith (2019), <https://www.childtrends.org/blog/a-parents-health-is-one-of-the-strongest-predictors-of-a-childs-health>.

³⁰ 305 ILCS 5/16-1.

³¹ Illinois Dep't of Healthcare and Family Services, *Coverage For Immigrant Seniors*, <https://www.dhs.state.il.us/page.aspx?item=128154>.

citizen children, who are not subject to a public charge determination but whose family members may seek legal permanent resident status in the future.

4. What national policies, including the policies referenced throughout this ANPRM, policies related to controlling paperwork burdens on the public, and policies related to promoting the public health and general well-being, should DHS consider when defining the term “public charge” and administering the statute more generally?

Public health is broadly defined as what “we as a society do collectively to assure the conditions in which people can be healthy.”³² In defining the term “public charge,” DHS must exclude all public benefit programs (including all health coverage programs and all public health programs and services) if we are to promote the public health of our immigrant families and indeed, the entire country. Such a definition would be fully aligned with Congress’s multiple COVID Relief Bills, which provide access to vaccines and other COVID-related health services for everyone, regardless of immigration status.³³

Staffing the COVID frontlines³⁴ in essential jobs,³⁵ low- and middle-income immigrant families, were disproportionately exposed to³⁶ COVID-19, and their limited access to healthcare and coverage made them disproportionately burdened with morbidity and mortality. As if this was not enough, immigrants faced an additional exacerbating factor, fear of negative immigration repercussions due to the 2019 public charge rule.³⁷ UnidosUS has documented, the COVID-19 pandemic continues to disproportionately impact Latinos and other people of color.³⁸ When compared to white, non-Hispanic persons, Latinos are 1.9 times more likely to contract COVID-19, 2.8 times more likely to be hospitalized due to COVID-19,

³² Institute of Medicine (US) Committee for the Study of the Future of Public Health, *The Future of Public Health* (1988), <https://www.ncbi.nlm.nih.gov/books/NBK218218/> doi: 10.17226/1091.

³³ Bills have included the American Rescue Plan Act, P.L. 117-2, March 11, 2021; the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 115-136, March 27, 2020; the Paycheck Protection Program and Health Care Enhancement (Paycheck Protection) Act, P.L. 116-139, April 24, 2020; and the Families First Coronavirus Response Act (FFCRA), H.R. 116-127, March 18, 2020. See also, National Immigration Law Center, *Understanding the Impact of Key COVID-19 Relief Bills on Immigrant Communities*, May 27, available at: <https://www.nilc.org/issues/economic-support/impact-of-covid19-relief-bills-on-immigrant-communities/>.

³⁴ *Immigrant Families during the Pandemic: On the Frontlines but Left Behind*, CLASP, Juan Carlos Gomez and Vanessa Meraz, Feb. 11, 2021, <https://www.clasp.org/publications/report/brief/immigrant-families-pandemic-frontlines>.

³⁵ *Immigrant Essential Workers and COVID-19*, National Conference of State Legislatures, Xavier Roberts and Christian Burks, (July 2021), <https://www.ncsl.org/research/immigration/immigrant-essential-workers-and-covid-19.aspx> *Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery*, Fwd.us., Dec. 16 2020, <https://www.fwd.us/news/immigrant-essential-workers/>.

³⁶ <https://www.nytimes.com/2020/04/25/opinion/immigrants-coronavirus.html>; see also, *Vulnerable to COVID-19 and in Frontline Jobs, Immigrants Are Mostly Shut Out of U.S. Relief*, Migration Policy Institute, Muzaffar Chishti and Jessica Bolter, April 24, 2020, <https://www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief>.

³⁷ *Immigrant Health Care in the Time of Coronavirus*, National Health Law Program, Priscilla Huang, (March 25, 2020), <https://healthlaw.org/immigrant-health-care-in-the-time-of-coronavirus/>. *Forgoing Healthcare in a Global Pandemic: The Chilling Effects of the Public Charge Rule on Health Access Among Children in California*, Alma Guerrero, et al, (April 7, 2021), <https://latino.ucla.edu/research/public-charge-ca-children/>.

³⁸ Population Reference Bureau analysis of data from the U.S. Census Bureau and the U.S. Centers for Disease Control and Prevention, for UnidosUS, “By the Numbers: Latinos in the Time of Coronavirus,” <https://www.unidosus.org/esperanzahopeforall/>

and 2.3 times more likely to die from the disease.³⁹ At the same time, Latinos are less likely to have benefits to help them when they become sick, such as comprehensive health insurance.⁴⁰ Because the 2019 public charge rule penalized use or potential future use of a broad array of benefits, it chilled enrollment⁴¹ into the very health coverage and public health programs, and to accessing vaccines,⁴² that immigrants needed most and that would have helped protect overall public health.⁴³

We know from the aftereffects of the 2019 Rule, which penalized application and use of some Medicaid programs, that when health programs are included in a public charge assessment, noncitizens of all immigration statuses are reluctant to seek medical care or coverage,⁴⁴ including the public health programs and services that mitigate the harm of COVID-19.⁴⁵ The Seventh Circuit Court of Appeals wrote tellingly about the harm of including medical coverage in the 2019 Rule:

“[t]he importance of the chilling effect is not the number of disenrollments in the abstract, but the collateral consequences of such disenrollments. DHS failed adequately to grapple with the latter. For example, commenters predicted that disenrollment and under-enrollment in Medicaid,

³⁹ Centers for Disease Control and Prevention, “*Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*,” updated July 16, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

⁴⁰ Samantha Artiga, Jennifer Tolbert, and Kendal Orgera, *Hispanic People are Facing Widening Gaps in Health Coverage*, (San Francisco: Kaiser Family Foundation, November 6, 2020), <https://www.kff.org/policy-watch/hispanic-people-facing-widening-gaps-health-coverage/>.

⁴¹ *Thawing the Chill From Public Charge Will Take Time and Investment*, Caroline La Rochelle MPH, Diana Montoya-Williams MD, FAAP, Kate Wallis MD, MPH, (April 13, 2021), <https://policylab.chop.edu/blog/thawing-chill-public-charge-will-take-time-and-investment>.

⁴² *KFF COVID-19 Vaccine Monitor: COVID-19 Vaccine Access, Information, and Experiences Among Hispanic Adults in the U.S.*, Liz Hamel, Samantha Artiga, Alauna Safarpour, Mellisha Stokes, and Mollyann Brodie, (May 13, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-access-information-experiences-hispanic-adults/>.

⁴³ *Immigrant Families Continued Avoiding the Safety Net during the COVID-19 Crisis*, Hamutal Bernstein, Michael Karpman, Dulce Gonzalez, Stephen Zuckerman, (February 1, 2021), <https://www.urban.org/research/publication/immigrant-families-continued-avoiding-safety-net-during-covid-19-crisis>. *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis yet Avoided Safety Net Programs in 2020*, Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, May 26, 2021, <https://www.urban.org/research/publication/adults-low-income-immigrant-families-were-deeply-affected-covid-19-crisis-yet-avoided-safety-net-programs-2020>.

⁴⁴ *Chilling Effects: US Immigration Enforcement And Health Care Seeking Among Hispanic Adults*, Health Affairs, Abigail S. Friedman and Atheendar S. Venkataramani, (July 2021), <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.02356>. *Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs*, Health Affairs, Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez, and Anthony Barrows, (October 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763>. *Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*, Randy Capps, Michael Fix and Jeanne Batalova, Migration Policy Institute, (December 2020), <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>. See also, *Undocumented Immigrants and COVID-19: A Call for Federally Funded Health Care*, JAMA Health Forum, Rachel Fabi, PhD; Lilia Cervantes, MD, September 3, 2021, <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2783873>.

⁴⁵ See Jose F. Figueroa et al., *The Trump Administration’s ‘Public Charge’ Rule and COVID-19: Bad Policy at the Worst Time*, STAT News (Aug. 21, 2020), <https://www.statnews.com/2020/08/21/the-trump-administrations-public-charge-rule-and-covid-19-bad-policy-at-the-worst-time/> (“[T]he Trump administration has enacted policies making the spread of Covid-19 in immigrant communities even more likely.”).

including by immigrants not covered by the Rule, would reduce access to vaccines and other medical care, resulting in an increased risk of an outbreak of infectious disease among the general public. To recognize the truth in that prediction, one need only consider the current outbreak of COVID-19—a pandemic that does not respect the differences between citizens and noncitizens.”⁴⁶

This reluctance and fear existed despite the fact that the USCIS announced on March 13, 2020 that it “will not consider ‘testing, treatment, nor preventative care . . . related to COVID-19’ as part of a public charge determination[.]”⁴⁷

We are all safer when everyone has access to health care. The American Public Health Association has referred to the services provided by public benefit programs such as Medicaid as “the bedrock of the public health infrastructure.”⁴⁸ Medicaid coverage improves public health and prevents large-scale impoverishment that would otherwise ensue due to growing wage inequality and the prohibitively high costs of health care.⁴⁹ The positive effects Medicaid has on enrollees’ health behaviors, access to care, and health outcomes, and ultimately on population health, produces compound socioeconomic benefits.⁵⁰ Immigrants are more likely to earn lower wages on average and have less access to employer-sponsored insurance, so Medicaid’s positive impact on the lives of people in these populations is even more pronounced.⁵¹

DHS should also consider that the use of federal nutrition programs like SNAP and WIC are closely tied to improved public health and therefore should be excluded from any public charge determination. In the SNAP program, research has shown that SNAP reduces food insecurity by up to 30 percent, and people in food insecure households spend up to 45 percent more each year on health care costs than those in food secure households.⁵² In addition, increased access to nutritious food means that SNAP recipients are more likely to say that they are in excellent or very good health, as compared with people who do not

⁴⁶ *Cook County, Illinois v. Wolf*, 962 F.3d 208, 238 (7th Cir. 2020).

⁴⁷ Practice Alert: COVID-19 and the Public Charge Rule, Am. Immigr. Laws. Ass’n (June 15, 2020), <https://www.aiala.org/advo-media/aiala-practice-pointers-and-alerts/practicealert-covid-19-and-the-public-charge-rule>.

⁴⁸ *ACP Vows to “Do What it Takes” to Protect Immigrants’ Access to Health Care*, American College of Physicians (Oct. 19, 2018), <https://www.acponline.org/advocacy/acp-advocate/archive/october-19-2018/acp-vows-to-do-what-it-takes-to-protectimmigrants-access-to-health-care> [<https://perma.cc/HCG2-DSNM>]. See, e.g., Am. Pub. Health Ass’n, Comment Letter on Proposed Rule on Inadmissibility on Public Charge Grounds (Dec. 10, 2018), https://www.apha.org/-/media/files/pdf/advocacy/testimonyandcomments/181210_apha_public_charge_comments.ashx?la=en&hash=56A1A126FC49D31E1766368617B2284942A01B70 [<https://perma.cc/5ZAP-QRPG>]

⁴⁹ Williamson et al., *supra* note 138; Samantha Artiga et al., *How do Health Care Costs fit into Family Budgets? Snapshots from Medicaid Enrollees*, Kaiser Family Foundation, (2017), <http://files.kff.org/attachment/Issue-Brief-How-do-Health-Care-Costs-fit-into-Family-BudgetsSnapshots-from-Medicaid-Enrollees>.

⁵⁰ Sara R. Collins et al., *Americans’ Experiences with ACA Marketplace and Medicaid Coverage: Access to Care and Satisfaction*, The Commonwealth Fund (2016), https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_issue_brief_2016_may_1879_collins_americans_experience_aca_marketplace_feb_april_2016_tb.pdf.

⁵¹ Nat’l Acad. of Sci. Eng’g Med., *The Economic and Fiscal Consequences of Immigration* 122 (Francine D. Blau and Christopher Mackie eds.) (2017) (ebook), <https://www.nap.edu/read/23550/chapter/6#122>.

⁵² Steven Carlson, Brynee Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Center on Budget and Policy Priorities (2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

participate in the program.⁵³ According to a Center on Budget and Policy Priorities policy brief summarizing U.S. Department of Agriculture’s (USDA) research on WIC, women who receive WIC give birth to healthier babies, families receiving WIC eat healthier food, and low-income children who receive WIC are as likely to be immunized as children who are wealthier.⁵⁴

5. What potentially disproportionate negative impacts on underserved communities (e.g., people of color, persons with disabilities) could arise from the definition of “public charge” and how could DHS avoid or mitigate them?

The public charge statutory provision has an odious history of selective, discriminatory enforcement against disfavored ethnic and racial groups, single and pregnant women, and people with disabilities.⁵⁵ Some statutory factors -- age, health, and family status -- are (or are similar to) protected statuses. To avoid or mitigate negative impacts, DHS must follow prevailing law and must not violate civil rights laws when interpreting this provision.

Persons with Disabilities:

Previous definitions of public charge, including the 2019 Rule’s definition, had disproportionate negative impacts on people with disabilities.⁵⁶ To avoid or mitigate that, the definition of public charge—including but not limited to its treatment of public benefits, employment, wealth and resources, and the “health” factor in the statute—cannot permit disability or lack of ‘good health’ to be treated in a negative fashion or to be penalized in the public charge assessment. To penalize disability directly or indirectly would violate Section 504 of the Rehabilitation Act,⁵⁷ and cause disproportionate negative impacts on persons with disabilities.

The definition of public charge must not discriminate against immigrants with disabilities in either purpose or effect. This means that the agency must not adopt a definition that has the effect of discrimination – such as by weighing lower assets, less resources, and a more tenuous current financial situation factor too heavily under the “assets, resources, and financial status” factor where that situation is due to a disability. Already, many immigrants subject to the public charge test are precluded from work if they do not have work authorization and so may not have an adequate current income and therefore a limited present ability to build wealth. If that immigrant has a disability, then they may also face

⁵³ *Id.*

⁵⁴ Steven Carlson, Zoe Neuberger, *WIC Works: Addressing the Nutrition and Health Needs of Low-Income Families for More Than Four Decades*, Center for Budget and Policy Priorities (2021).

⁵⁵ Historians’ Comment, DHS Notice of Proposed Rule “Inadmissibility on Public Charge Grounds,” FR 2018-21106 (Oct. 5, 2018).

⁵⁶ See, e.g., Alessandra N. Rosales, *Excluding ‘Undesirable’ Immigrants: Public Charge as Disability Discrimination*, 119 Mich. L. Rev. 1613 (2021), <https://repository.law.umich.edu/mlr/vol119/iss7/5>.

⁵⁷ Section 504 provides: “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency” 29 U.S.C. § 794(a). The 2019 Rule unreasonably interpreted the INA because it equated “health” with “lack of disability” per se and thus conflicts with Section 504 of the Rehabilitation Act of 1973. *Cook County v. Wolf*, 962 F.3d 208, 228 (7th Cir. 2020).

discrimination in employment due to the prevalence of disability.⁵⁸ DHS must mitigate against this known issue by not weighing current financial situation heavily. Antidiscrimination law requires reasonable accommodations, meaning changes from a rule, policy, or practice—even a lawfully enacted law that is uniformly applied—to avoid disability discrimination.⁵⁹ To ensure people with disabilities have equal access to the adjustment of immigration status, the agency cannot hold situations (such as lower amount of savings) that stem from society’s negative treatment of disability against an applicant.⁶⁰

Further, DHS must not discriminate by drawing negative conclusions about future earning potential based on a disability. Attitudinal discrimination by making assumptions about people with disabilities’ success in employment is not permitted under Section 504 of the Rehabilitation Act (to which DHS is subject). In the Americans with Disabilities Act (ADA) employment context, another federal agency, the Equal Employment Opportunity Commission (EEOC), considers attitudinal barriers toward individuals with disabilities—including "unfounded concerns, mistaken beliefs, fears, myths, or prejudice about disabilities"⁶¹ about productivity or otherwise—to constitute discrimination based on perceptions of disability.

Disability is not, and should not be treated as, an undesired characteristic for U.S. citizens. All bodies are unique, essential, and equal. All bodies have strengths and needs that must be met. Any definition of public charge must ensure that family unification and admission is not denied to disabled immigrants and families.

People of Color:

SNAP. Considering SNAP in the public charge determination would have negative disproportionate impacts on people of color⁶² In contrast, among SNAP recipients, 45 percent are white, 22 percent are Latinx, 27 percent are Black, and 3 percent are Asian.⁶³ By a significant margin, Black and Latino/a/x communities are disproportionately represented among the population of SNAP recipients. This is not surprising, given the dramatic wage gap between racial groups. Wage data from July 2021 that showed Black people make only 79 percent as much as white people, while Latino/a/x people make 77 percent as much as white people.⁶⁴ Because counting receipt of SNAP as an element in the public charge test would have a disproportionate impact on people who are Black or Latino/a/x, receipt of these vital nutrition benefits should not be considered.

⁵⁸ Parker Harris, S., Gould, R., and Mullin, C. (2019). *ADA research brief: Experiences of discrimination and the ADA* (pp. 1-6). Chicago, IL: ADA National Network Knowledge Translation Center, ADA National Network, https://adata.org/research_brief/experience-discrimination-and-ada.

⁵⁹ 28 CFR § 35.130(b)(7).

⁶⁰ See Farnoosh Torabi, "How Ableism Contributes to the Wealth Gap in America and What We Can All Do About It," (Jul. 2021), <https://time.com/nextadvisor/in-the-news/how-ableism-contributes-to-the-wealth-gap/>.

⁶¹ 9 C.F.R. pt. 1630, app. (commentary on §1630.2(l)) (ADA Title I).

⁶² United States Census Bureau, *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, (2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>

⁶³ Tracy A. Loveless, *Supplemental Nutrition Assistance Program (SNAP) Receipt for Households: 2018*, (2020).

⁶⁴ U.S. Department of Labor, Bureau of Labor Statistics, *Usual Weekly Earnings of Wage and Salary Workers Third Quarter 2021*, (2021).

Financial Status. As evidenced by the 2019 Rule, weighing a person’s current financial situation too heavily in the public charge determination could discriminate against people of color. The 2019 Rule counted income under 125 percent of the federal poverty level as a “heavily weighted factor.” This would have resulted in people from Mexico and Central America (mostly people of color) being at a much higher risk of denial than immigrants from Europe, Canada, Australia (mostly white people).⁶⁵ Additionally, many people subject to the public charge test live in the U.S. and while some are working, immigration law barriers to work authorization, and ethnic and racial employment discrimination and other circumstances here in the U.S., force many immigrant workers of color to face economic insecurity. Foreign-born workers are overwhelmingly people of color, with Hispanic, Asian, and Black workers making up over 80% of all foreign-born workers.⁶⁶ They are more likely to work in lower-wage jobs than U.S. born workers.⁶⁷ Immigrants should not be penalized for being unable to access higher wage jobs in the U.S.

Further, an immigrant’s current financial status is not an accurate indication of their future potential earnings and whether they are likely to become primarily and permanently reliant on the federal government to avoid destitution. Research demonstrates the immigrants improve their economic status over time. Analysis conducted by the Center for Health Policy Research found that immigrants have substantial economic mobility. When immigrants first arrive in the United States, they have less social capital, and their job skills and experience may not align perfectly with the American job market. Over time, immigrants’ social capital increases and job skills and experience improve, increasing their income to eventually catch up to non-immigrants. Additionally, immigrants with low education close the immigrant-U.S. born income gap even faster, catching up with similar US-born counterparts within seven years.⁶⁸

⁶⁵ Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule, Migration Policy Institute, Jeanne Batalova, Michael Fix and Mark Greenberg, August 2018, <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>.

⁶⁶ U.S. Department of Labor, Bureau of Labor Statistics, *Foreign-Born Workers: Labor Force Characteristics — 2020*, (2021), <https://www.bls.gov/news.release/pdf/forbrn.pdf>

⁶⁷ *Essential but undervalued: Millions of health care workers aren’t getting the pay or respect they deserve in the COVID-19 pandemic*, Brookings, Molly Kinder, (May 28, 2020), <https://www.brookings.edu/research/essential-but-undervalued-millions-of-health-care-workers-arent-getting-the-pay-or-respect-they-deserve-in-the-covid-19-pandemic/>. *Essential workers comprise about half of all workers in low-paid occupations. They deserve a \$15 minimum wage.*

Molly Kinder and Laura Stateler, (February 5, 2021), <https://www.brookings.edu/blog/the-avenue/2021/02/05/essential-workers-deserve-minimum-wage-increase/>. *Raising the Minimum Wage Would Boost an Economic Recovery—and Reduce Taxpayer Subsidization of Low-Wage Work*, Center for American Progress, Lily Roberts and Ben Olinsky, (January 2021), <https://www.americanprogress.org/issues/economy/news/2021/01/27/495163/raising-minimum-wage-boost-economic-recovery-reduce-taxpayer-subsidization-low-wage-work/>.

⁶⁸ Leighton Ku and Drishti Pillai, *The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities* (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

Older Adults, Particularly Older Adults of Color:

Public charge definitions over time, including but not limited to the 2019 Rule,⁶⁹ had disproportionate negative impacts on older adults, particularly older adults of color. To avoid or mitigate that, the definition of public charge—including but not limited to its treatment of public benefits, employment, wealth and resources, and the “health” factor in the statute—cannot permit older age or lack of youth to be treated in a negative fashion or to be penalized in the public charge assessment.

To that end, any definition of public charge must avoid the 2019 Rule’s pitfalls. The 2019 Rule:

- Prevented United States citizens from welcoming their noncitizen parents and harmed older adults who rely on their families for support;
- Disproportionately harmed older immigrants of color;
- Threatened the well-being of caregivers, leaving many older adults and people with disabilities who are United States citizens without access to the caregiving they need; and
- Harmed older immigrants and their families by discouraging enrollment in programs that improve health, food security, nutrition, and economic security.

The public charge definition must not penalize older adults for a current financial status that is considered lower income. As noted above, many immigrants subject to the public charge test are precluded from work if they do not have work authorization and thus they may not have an adequate current income or present ability to build wealth in the United States. If that immigrant is over age 40, then they may also face discrimination in employment due to the prevalence of age discrimination.⁷⁰ Older adults of color also face discrimination in employment on the basis of race.⁷¹ Any public charge definition must not permit family unification to become an available only to young immigrants and immigrants with means.

DHS must also not discriminate in its definition by drawing negative conclusions about future earning potential based on older age. While the statute invites considering age, it does not dictate that a negative assumption about one’s likelihood of becoming a public charge must inhere at an older age. Negatively weighing old age is a vestige of the past, and it is not supported by current science or sound social policy.

Further, any public charge definition must make allowances for the admission of family members who are coming to care for older adults; or are themselves older adults coming to provide care. There is a demand for caregivers, and they should be permitted to come rejoin family even if their affidavit of support does not meet the statutory factors without being labeled a public charge.

⁶⁹ See, e.g., Justice in Aging amicus brief in an S.D.N.Y. case litigating the 2019 Rule. <https://justiceinaging.org/wp-content/uploads/2020/01/Filed-Amicus-Brief-NY-AG-Appeal.pdf>.

⁷⁰ Workplace Age Discrimination Still Flourishes in America, AARP (Dec. 2019), <https://www.aarp.org/work/working-at-50-plus/info-2019/age-discrimination-in-america.html>.

⁷¹ Nicole Delaney & Joanna Lahey, *The ADEA at the Intersection of Age and Race*, 40 Berkeley J. Emp. & Lab. Law 61 (2019) (describing the intersectionality and prevalence of race and age discrimination claims).

6. What tools and approaches can DHS use to ensure that future rulemaking is appropriately informed by available evidence?

DHS should prioritize input from those who are most directly impacted by public charge – immigrants and their family members who are in need of public benefits. DHS should expect some obstacles in reaching this population given that the chilling effect remains strong in light of the various changes to public charge over the last five years. To overcome these obstacles, DHS may need to invest resources into building trust with immigrant communities. At the same time, DHS should actively seek the input of groups that immigrants may already trust, such as family members, community organizations, and direct service providers. DHS must also take care to deploy engagement methods that are culturally competent and address the fears of immigrant communities.

III. Request for Information (continued)

B. Prospective Nature of the Public Charge Inadmissibility Determination

2. Questions for the Public

1. To the extent that DHS considers a noncitizen’s past or current receipt of public benefits, for what period of time before the public charge inadmissibility determination should DHS consider the noncitizen’s receipt of public benefits? Why is that time period relevant?

DHS should not consider past or current receipt of public benefits. No time period is relevant. Please see III-F-2 below.

III. Request for Information (continued)

C. Statutory Factors

2. Questions for the Public

1. Which factors (whether statutory factors or any other relevant factors identified by the commenter) are most predictive of whether a noncitizen is likely (or is not likely) to become a public charge? To the extent that data exist on this question, how can DHS use such data to improve public charge policymaking and adjudication?

Congress has determined that the existence of an **affidavit of support** for an immigrant that is required to submit one most predicts that an immigrant will not become a public charge. Congress has answered this question and the agency must follow that instruction.

In 1996, Congress addressed public charge concerns by limiting but not eliminating immigrant eligibility for public benefits programs (programs it likewise constrained for all beneficiaries with changes such as durational limits and work requirements), and by strengthening the INA’s affidavit of support provisions to ensure that immigrants are able to depend on sponsors to meet their needs, not the federal government.

The Committee Report to PRWORA explicitly establishes that PRWORA amended the INA to make the affidavit of support enforceable *in order to cure public charge concerns*:

By regulation and administrative practice, the State Department and the Immigration and Naturalization Service permit a prospective permanent resident alien (also immigrant or green card holder) who otherwise would be excluded as a public charge (i.e., because of insufficient means or prospective income) to overcome exclusion through an affidavit of support or similar document executed by an individual in the United States commonly called a “sponsor.”⁷²

The adopted text of the INA, too, shows this connection: “No affidavit of support may be accepted by the Attorney General or by any consular officer *to establish that an alien is not excludable as a public charge* under section 1182(a)(4) of this title *unless* such affidavit is executed by a sponsor of the alien as a contract”⁷³ Courts have likewise noted that the affidavit of support addresses the public charge concern.⁷⁴

The sponsor must prove that the immigrant relative who they are responsible for bringing to the United States will be financially supported after arriving in the United States—in other words, that the immigrant will not end up being a “public charge.”⁷⁵ Section 1183 of the INA specifically entitles “the proper law officers” of “any State, territory, district, county, town, or municipality in which [an] alien becomes a public charge” to bring a lawsuit against any individual who sponsored an immigrant’s visa to enforce the affidavit of support.⁷⁶ The INA also places strict restrictions on who can be a sponsor, and makes a sponsor’s contractual obligation enforceable after admission.⁷⁷ The commitment under this contract continues until the person who immigrates becomes a U.S. citizen, dies, or can be credited with 40 quarters of work in the United States.⁷⁸

The affidavit-of-support provision represents Congress’s desire to balance the goal of family reunification against concern for the public fisc. As described above, Congress already addressed public charge concerns by limiting (but not eliminating) immigrants’ public benefits eligibility, and by tightening who can serve as a sponsor and making a sponsor’s contractual obligation enforceable. We opposed the 2019 Rule as contrary to law and arbitrary and capricious because, among other issues, DHS dismantled that congressional solution by instituting a bar against immigrants at admission who were considered likely at any time in the future to receive public benefits. The 2019 Rule undid Congress’s careful balancing in the INA and IIRIRA, and the agency must not make this mistake again.

Relying upon the affidavit of support to address public charge also overcomes the potential for unfairness and discrimination otherwise invited in the public charge analysis. The statutory requirements of the affidavit of support are mathematic, succinct, and well-known. The affidavit of support was used to

⁷² H.R. Rep. No. 104-725, at 387-90 (1996), as reprinted in 1996 U.S.C.C.A.N. 2649, 2775-78.

⁷³ 8 U.S.C. § 1183a(a)(1) (emphasis added).

⁷⁴ *Wenfang Liu v. Mund*, 686 F.3d 418, 420 (7th Cir. 2012) (“[The public charge] provision is implemented by requiring a person who sponsors an alien for admission to ‘execute an affidavit of support.’ 8 C.F.R. § 213a.2(a), (b); see also 8 U.S.C. § 1182(a)(4)(C)(ii).”); *Erlor v. Erlor*, 824 F.3d 1173, 1177 (9th Cir. 2016) (The purpose of the affidavit-of-support requirement is to “ensur[e] that the immigrant’s income is sufficient to prevent her from becoming a public charge.”).

⁷⁵ 8 U.S.C. 1183a.

⁷⁶ 8 U.S.C. § 1183.

⁷⁷ 8 U.S.C. §§ 1182(a)(4)(C), 1182(a)(4)(D).

⁷⁸ 8 U.S.C. § 1183a(a)(3).

address public charge concerns for 20 years under the 1999 Field Guidance. Referring to the affidavit of support can overcome the bias and arbitrary nature of the other statutory factors.

2. How can DHS address the potential for perceived or actual unfairness or discrimination in public charge inadmissibility adjudications, whether due to cognitive, racial, or other biases; arbitrariness; variations in outcomes across cases with similar facts; or other reasons?

Unfairness and discrimination in public charge inadmissibility adjudications are real concerns. The agency must construe the Affidavit of Support as satisfying the public charge provision and must “consider” the other factors in a way that comports with civil rights and anti-discrimination laws. Any other approach will invite confusion, biases, arbitrariness, and variations in outcomes across cases with similar facts. Please see above at III-C-1 for more on the affidavit of support.

If adjudicators identify a circumstance that might make someone meet the definition of a public charge for someone who is not required to submit an affidavit of support, or, who has submitted an insufficient affidavit, they must then look to the factors for redemption. The judicial and administrative decisions that were used to inform adding the five “totality of circumstances” factors to the statute in 1996 overwhelmingly found immigrants not excludable based on one or more of the factors when considering the totality of circumstances. For example, if “financial status” is a concern because the applicant is not working while also enrolled in nursing school, but “education and skills” are positive because the applicant is training to become a nurse, on balance the person is not “likely to become primarily and permanently reliant on the federal government to avoid destitution.” DHS should also provide reasonable opportunities for applicants to address or cure any concerns about the statutory factors. Again, this should only come into play if there is no properly filed affidavit of support, or if it is insufficient.

USCIS should regularly report data that indicates green card denials on public charge grounds by country of origin, and providing details about the applicant’s race, age, and disability, if refused under public charge. Ideally USCIS would report on this monthly (with appropriate lag time) to give the agency and stakeholders a better understanding of the implementation of a new public charge policy.

4. Should DHS give any more or less consideration to any one or more of the statutory factors, the Affidavit of Support Under Section 213A of the INA, or any additional factors DHS may add through the rulemaking process in a public charge inadmissibility determination?

A. Age

1. How should an applicant’s age be considered as part of the public charge inadmissibility determination?

Age can be used to help overcome another circumstance of concern. For example, if an applicant is not earning an income because she is in school, the fact that she is 21 and has a whole life of work ahead of her should be a positive factor. Additionally, being under the age of 21 should create a strong presumption that an individual will not be a public charge. Children and youth are inherently dependent on others to provide for their basic needs across their life stages. And because of their age, factors like

education and economic resources are often out of their control and hold no predictive power for their potential to be a public charge in the future. For instance, a 13-year-old would not be expected to be self-sufficient even at age 18, when many young adults still receive help from their parents while navigating higher education or their first job. Adjudicators in a public charge assessment should consider only whether the child has a sponsor.

Being of advanced age and not working in the formal economy should not be viewed as a negative, particularly when an older member of the family is providing care for a spouse, a child, or other family member. In addition, if an older person has a sponsor, family or community that will support them, they will be unlikely to become primarily and permanently dependent on the government. As immigrants and U.S. citizens continue to live longer lives, it is important that older age not be penalized in the public charge test. Ageism is discrimination against older people due to negative and inaccurate stereotypes.⁷⁹ Aging leads to new abilities and knowledge that older adults can share with our communities. Neuroscience now supports neural plasticity well into older age.⁸⁰ Our local governments and communities are finding creative solutions to ensure we can thrive as we age. Despite ageist misconceptions to the contrary, older people are vibrant, valuable, and largely independent members of the community.⁸¹ The public charge test must not manifest ageism by negatively weighing older age.

B. Health

1. How should DHS define health for the purposes of a public charge inadmissibility determination?

In light of the legal issues that inhere in a broad examination of “health” for public charge purposes vis-à-vis disability discrimination law, analysis by the agency of health should be limited to Class A conditions, such that an individual’s lack of a Class A condition is a positive factor under this ‘health’ factor. Health should not be a strong factor in a child’s public charge determination. In cases where a child has a health condition, research shows that early treatment and intervention can lead to stronger health outcomes in the future, including for children with chronic conditions or physical disabilities.⁸²

2. Should DHS consider disabilities and/or chronic health conditions as part of the health factor? If yes, how should DHS consider these conditions and why?

It is impossible for an immigration officer to know the severity and impairments related to a chronic condition or how they will influence the individual’s life experiences. Nearly half of all Americans have

⁷⁹ *Ageism*, National Center on Elder Abuse, https://ncea.acl.gov/NCEA/media/Publication/NCEA_RB_Ageism.pdf.

⁸⁰ Kirk I. Erickson et al, “*Physical activity and brain plasticity in late adulthood*,” *Dialogues Clin. Neurosci.* (Mar. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3622473/> (the human brain is capable of remarkable plasticity, even in late life).

⁸¹ *Ageism*, National Center on Elder Abuse, https://ncea.acl.gov/NCEA/media/Publication/NCEA_RB_Ageism.pdf.

⁸² See, e.g., Park, Edwin, et al, “*Jeopardizing a Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm*,” The Commonwealth Fund (Dec. 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/dec/short-term-cuts-medicare-long-term-harm>.

at least one chronic condition, and the number is growing.⁸³ Many people today live long and productive lives with conditions like cancer and diabetes.

In addition, considering disabilities or chronic health conditions would open DHS up to potential racial bias.

Please see above at III-A-5.

3. How should the Rehabilitation Act of 1973’s prohibition of discrimination on the basis of disability be considered in DHS’s analysis of the health factor?

Please see above at III-A-5.

4. How should DHS consider the Report of Medical Examination and Vaccination Record, Form I-693, as part of the health factor?

Determining whether a person’s health makes them inadmissible is the role of the panel physician. Any attempt by DHS adjudicators to predict the course of an applicant’s health condition are speculative, and beyond DHS’ expertise. DHS should not consider disabilities or chronic health conditions as part of the health factor because it is impossible for an immigration officer to know the severity and impairments related to a chronic condition or how they will influence the individual’s life experiences. For the reasons discussed above in response to question B. 1 and B. 2, DHS should limit the consideration of health to the types of communicable diseases that are grounds for inadmissibility under 8 U.S.C. Section 1182(a)(1)(A).

5. Should DHS account for social determinants of health to avoid unintended disparate impacts on historically disadvantaged groups? If yes, how should DHS consider this limited access and why?

Social determinants of health (SDOH) are generally defined as the existing broader structures and living conditions that influence health: “the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life [which] include economic policies and systems, development agendas, social norms, social policies and political systems.”⁸⁴ Yes, DHS must account for SDOH when crafting a new public charge test. If DHS did not, it would be akin to turning a blind eye towards the wide range of societal inequities that harm noncitizens in the United States. Indeed, on November 14, 2018, then-Secretary of the U.S. Department of Health & Human Services, Alex Azar, spoke at the Hatch Foundation’s National Health Care Innovation Symposium on the importance of addressing SDOH. Azar stated that: “*Social determinants of health is an abstract term, but for millions of Americans, it is a very tangible, frightening challenge: How can someone manage diabetes if they are constantly worrying about how they’re going to afford their meals each week? How can a mother with an asthmatic son really improve his health if it’s their living environment that’s driving his condition?*”

⁸³ Centers for Disease Control and Prevention, Prevalence of Multiple Chronic Conditions Among US Adults, 2018, https://www.cdc.gov/pcd/issues/2020/20_0130.htm.

⁸⁴ World Health Organization, Social Determinants of Health webpage, https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

Addressing SDOH requires that DHS acknowledge that immigration policy is itself a SDOH.⁸⁵ Our country's public charge policy is itself an example of how centuries of institutionalized oppression against immigrants⁸⁶—especially immigrants of color -- have created and perpetuated discrimination and disadvantage for this particular group of noncitizens. These underlying social values from the public charge policy over the centuries—especially in its early incarnation of bigotry and racism as discussed elsewhere in this comment, have manifested into a current policy affecting the distribution of resources and access across society. These, in turn, have shaped living conditions and access to resources (e.g., health care and public benefits⁸⁷ and programs), and caused stressors,⁸⁸ which influence health behaviors⁸⁹ and access to care, and ultimately health outcomes for noncitizens.⁹⁰ Therefore any public charge policy which seeks to promote self-sufficiency is required to assess how it contributes to the often-invisible societal policies pervasively and cumulatively working against these noncitizens.

Because of our country's discriminatory societal structures upstream, downstream, people of color, including noncitizens, disproportionately have fewer high-quality choices when it comes to housing,⁹¹

⁸⁵ Castañeda H, Holes SM, Madrigal DS, DeTrinidad Young ME, Beyeler N, Quesada J. *Immigration as a social determinant of health*. Annual Review of Public Health. 2015;36(1):375–392.

⁸⁶ U.S. Citizenship and Immigration Services, *Public Charge Provisions of Immigration Law: A Brief Historical Background* (2019), <https://www.uscis.gov/about-us/our-history/history-office-and-library/featured-stories-from-the-uscis-history-office-and-library/public-charge-provisions-of-immigration-law-a-brief-historical-background>

⁸⁷ Jennifer Stuber & Karl Kronebusch, Stigma and other determinants of participation in TANF and Medicaid, 23 J. POL'Y ANALYSIS & MGMT. 509 (2004); Claudia Schlosberg & Dinah Wiley, Nat'l Health Law Prog. and NILC, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care* (1998), https://www.montanaprobono.net/geo/search/download.67362#N_%202; Marilyn R. Ellwood & Leighton Ku, *Welfare And Immigration Reforms: Unintended Side Effects For Medicaid*, 17 HEALTH AFFAIRS 137 (1998), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.17.3.137>.

⁸⁸ *Discrimination: A Social Determinant Of Health Inequities*, Health Affairs, Brigette A. Davis, FEBRUARY 25, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200220.518458/full/>. *Stress Is A Key To Understanding Many Social Determinants Of Health*, Aric A. Prather, Health Affairs, FEBRUARY 24, 2020, [10.1377/hblog20200220.839562](https://www.healthaffairs.org/doi/10.1377/hblog20200220.839562).

⁸⁹ Wendy E. Parmet, *The Health Impact of the Proposed Public Charge Rules*, HEALTH AFFAIRS BLOG (Sept. 27, 2018), <https://www.healthaffairs.org/doi/10.1377/hblog20180927.100295/full/>.

⁹⁰ *Social Determinants of Health and Health Disparities Among Immigrants and their Children*, Cindy D.Chang MD, Department of Emergency Medicine Los Angeles County, Harbor-UCLA Medical Center, 28 December 2018, <https://doi.org/10.1016/j.cppeds.2018.11.009>; Martinez-Cardoso, A., Jang, W. & Baig, A.A. *Moving Diabetes Upstream: the Social Determinants of Diabetes Management and Control Among Immigrants in the US*. *Curr Diab Rep* 20, 48 (2020). <https://doi.org/10.1007/s11892-020-01332-w> (showing that Immigrants with diabetes face a multitude of structural constraints to managing their diabetes: housing precarity, food insecurity, poverty, uninsurance and underinsurance, and limited support for immigrants in healthcare systems are consistently shown to deter diabetes management and care.)

⁹¹ *Housing Discrimination against Racial and Ethnic Minorities 2012: Full Report*, Urban Institute, Margery Austin Turner, Robert Santos, Diane K. Levy, Douglas A. Wissoker, Claudia Aranda, Rob Pitingolo, June 11, 2013, <https://www.urban.org/research/publication/housing-discrimination-against-racial-and-ethnic-minorities-2012-full-report>. Joint Center for Housing Studies of Harvard University, “Renter Cost Burdens By Race and Ethnicity (1B),” https://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race (last accessed October 2020). Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

range of nutritious food choices,⁹² availability of high-paying safe job, availability of transportation options, accessibility of parks and recreation, and more.

- Noncitizens disproportionately work in essential front-line services jobs that disproportionately have lower wages,⁹³ and experience less meaningful access to safe jobs that pay a living wage.⁹⁴ The U.S. faces a persistent and pervasive wage gap for women and people of color. Latinas are paid just 55 cents for every dollar paid to white, non-Hispanic men, and black women 63 cents for every dollar paid to white, non-Hispanic men. Even among men, black men earned 87 cents for every dollar a white man earned and Hispanic workers earned 91 cents for every dollar earned by white men.⁹⁵
- Noncitizens disproportionately have lower access to affordable comprehensive employer-sponsored health coverage, and a higher prevalence of toxic exposures (such as pesticides, lead or even COVID-19 or other infections), as discussed throughout this comment.

Therefore, addressing the SDOH requires DHS to confront and acknowledge these societal barriers by creating a public charge rule that:

- **Reflects the reality of our nation’s low-wage economy that noncitizens must navigate**,⁹⁶ and therefore:
 - DHS should consider varied economic opportunities both in the U.S. and before coming to the U.S. DHS must not penalize applicants who may not have been able to work or may have

⁹² *Linking historical discriminatory housing patterns to the contemporary food environment in Baltimore*, Richard C. Sadler, Usama Bilal, C. Debra Furr-Holden, Urban institute, (June 2021), <https://housingmatters.urban.org/research-summary/how-does-legacy-housing-discrimination-affect-food-access>. Also see *Searching for Markets: The Geography of Inequitable Access to Supermarkets in the United States*, Reinvestment Fund, (2012), <https://www.reinvestment.com/research-publications/policymap-and-using-limited-supermarket-analysis-in-your-target-market-2/> (showing that Latinos are 1.38 times more likely than Whites to live in neighborhoods without access to a full-service grocery store.).

⁹³ People of color are also disproportionately concentrated in low-wage jobs. The pandemic hurt low-wage workers the most—and so far, the recovery has helped them the least, Brookings, Nicole Bateman and Martha Ross, July 28, 2021, available at: <https://www.brookings.edu/research/the-pandemic-hurt-low-wage-workers-the-most-and-so-far-the-recovery-has-helped-them-the-least/>. Realism about reskilling: Upgrading the career prospects of America's low-wage workers, Brookings, Marcela Escobari, Ian Seyal, and Michael J. Meaney, November 7, 2019, <https://www.brookings.edu/research/realism-about-reskilling/>. Economic Policy Institute and Oxfam America, *Few Rewards: An Agenda to Give America’s Working Poor a Raise* (2016), https://www.oxfamamerica.org/static/media/files/Few_Rewards_Report_2016_web.pdf.

⁹⁴ Nat’l Acad. of Sci. Eng’g Med., *The Economic and Fiscal Consequences of Immigration* 122 (Francine D. Blau and Christopher Mackie eds.) (2017) (ebook), <https://www.nap.edu/read/23550/chapter/6#122>.

⁹⁵ S. Miller, *Black Workers Still Earn Less than Their White Counterparts*, June, 2020, <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/racial-wage-gaps-persistence-poses-challenge.aspx>. Based on a survey conducted between January 2017 and February 2019.

⁹⁶ *Essential but undervalued: Millions of health care workers aren’t getting the pay or respect they deserve in the COVID-19 pandemic*, Brookings, Molly Kinder, May 28, 2020, <https://www.brookings.edu/research/essential-but-undervalued-millions-of-health-care-workers-arent-getting-the-pay-or-respect-they-deserve-in-the-covid-19-pandemic/>. Essential workers comprise about half of all workers in low-paid occupations. They deserve a \$15 minimum wage. Molly Kinder and Laura Stateler, Friday, February 5, 2021, <https://www.brookings.edu/blog/the-avenue/2021/02/05/essential-workers-deserve-minimum-wage-increase/>. Raising the Minimum Wage Would Boost an Economic Recovery—and Reduce Taxpayer Subsidization of Low-Wage Work, Center for American Progress, Lily Roberts and Ben Olinsky January 27, 2021, <https://www.americanprogress.org/issues/economy/news/2021/01/27/495163/raising-minimum-wage-boost-economic-recovery-reduce-taxpayer-subsidization-low-wage-work/>.

been restricted to certain low-paying jobs based on their race, religion or other identity, before they came to the U.S.

- DHS should first look to the affidavit of support to assess the sufficiency of finances. Most applicants subject to public charge inadmissibility are required by law to have an affidavit of support. For an affidavit of support to be valid, a sponsor (including a joint sponsor if needed) has to have substantial assets or an income of at least 125% of FPL for a household that includes the sponsored immigrant.
- DHS must not penalize applicants who are currently unable to work in the U.S. if their current status does not permit them to have work authorization. For example, someone with a student visa who is filing for a marriage-based green card is generally ineligible for employment.
- DHS must create a public charge rule that acknowledges that many people who may not have a formal education or a steady job history in countries with little educational or economic opportunities are still able to find work in the U.S. and are not likely to become a public charge.
- **Excludes all public benefits and does not erect new barriers to health care and coverage.**⁹⁷ As previously described, individuals must have meaningful access to high-quality health care and public health systems, nutritious food, high-quality education opportunities, housing, transportation, and a safe environment. Ensuring access to health-supporting public benefits for all members of the community is not only critical for ensuring the long-term wellbeing of us all—it also embodies a moral commitment to solidarity with and compassion for the people who live among us and a recognition of the larger interconnectedness and societal forces at play.⁹⁸
- Exclude all housing, rental or homelessness assistance programs as a covered program and to make explicitly clear that these programs do not count towards a public charge determination.

D. Assets, Resources, and Financial Status

3. How should DHS define financial status for the purposes of a public charge inadmissibility determination?

Under AOS, the sponsor is already required to maintain the applicant at 125% of FPL.

4. How should DHS address the challenges faced by those not served by a bank or similar financial institution in demonstrating their assets, resources, and financial status?

According to a recent report by the Federal Reserve, about 5 percent of adults in the U.S. are “unbanked” or “underbanked,” with people with lower income, less education, Blacks and Hispanics more likely to be unbanked or underbanked. Immigrants, who are more likely to be low income and have less education,

⁹⁷ Medha D. Makhoulf, *The Public Charge Rule as Public Health Policy*, 16 Ind. Health L.J. 177 (2019), at 14.

⁹⁸ Dr. Diane Whitmore Schanzenbach, “*Nutrition Programs: Perspectives for the 2018 Farm Bill*”, U.S. Senate Committee on Agriculture, Nutrition and Forestry (2017), https://www.ipr.northwestern.edu/news/2017/Testimony_Schanzenbach.pdf; Hilary Hoynes, Diane Whitmore Schanzenbach, Douglas Almond, *Long-Run Impacts of Childhood Access to the Safety Net*, American Economic Review (2016), <https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf>

are more likely to be unbanked than native born U.S. citizens.⁹⁹ “Unbanked” people do not have a bank account, and people who are “underbanked” have banking services but they appear to have been insufficient to meet their financial services needs.¹⁰⁰ Many of these adults instead rely on alternative financial services such as money orders, check cashing, payday loans or payday advances, pawn shop loans, auto title loans, or tax refund advance. DHS should allow for alternative means to show income, assets, and resources and not just those in traditional banks, including records from alternative financial services transactions. The current affidavit of support focuses on savings and checking accounts, cash value of real-estate holdings, stocks, bonds, certificates of deposit. DHS should also include a question about other assets and estimated value (could be cash, gold, silver, or other valuables, businesses and other assets) and also about recent alternative financial services to show a record of income and payments.

5. Should DHS consider an applicant’s financial obligations (such as child or spousal support), debt, or bankruptcy in a public charge inadmissibility determination? If yes, how should DHS consider an applicant’s debt, bankruptcy, or financial obligations when evaluating an applicant’s financial status and why?

Applicants should have the option to provide evidence showing that they have met one or more financial obligations, which should be considered as a positive factor demonstrating their income. A broader consideration of debts and obligations could create a distorted picture of the applicant’s financial status unless they also presented a full accounting of their assets and income sources. Providing and processing this information would be unreasonably burdensome for both applicants and DHS and would likely lead to higher legal costs for applicants and increased USCIS backlogs.

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

2. Questions for the Public

1. How should DHS consider a sufficient Affidavit of Support Under Section 213A of the INA in the public charge inadmissibility determination?

A sufficient Affidavit of Support should mean that the applicant is not a public charge. Please see III-C-1 above for further information.

2. What weight should DHS give to a sufficient Affidavit of Support Under Section 213A of the INA in comparison to the mandatory statutory factors in the public charge inadmissibility determination?

⁹⁹ S. Rhine et. al, The Determinants of Being Unbanked for U.S. Immigrants, The Journal of Consumer Affairs, Summer 2006, <https://www.jstor.org/stable/23860560>.

¹⁰⁰ The Federal Reserve, Report on the Economic Well-Being of U.S. Households in 2020, May 2021, <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-banking-and-credit.htm>.

A sufficient Affidavit of Support should be adequate to establish that the applicant is not a public charge. The Affidavit of Support is relevant to the “assets, resources, and financial status” factor at 8 U.S.C. § 1182(a)(4)(B)(i)(IV) for those applicants required to submit an affidavit of support.

We believe the proper reading of the public charge provision of the INA is that it provides a number of factors for consideration to guide the applicant in preparing their case for admission and to guide the agency in making fair decisions. It does not establish a hierarchy where the five statutory factors are elevated above the affidavit of support because of the use of the word “shall” vs. “may”. The “may” used in conjunction with the “affidavit of support” does not imply it is due lesser weight, but instead reflects the fact that the statute could not similarly command consideration of the affidavit of support with “shall” because some immigrants subject to the public charge test are not required to submit an affidavit of support. For instance, Diversity Lottery winners must go through the public charge test, but they are not required to have a sponsor or submit an affidavit of support. The public charge provision could not mandate consideration of the affidavit of support without creating a statutory conflict.

The statute itself also contemplates that other factors can be considered – the five in the statute are a “minimum,” not the most important or only. And importantly, the INA does not state *how* the public charge factors are to be weighed, and it does not state that any of the factors must be considered penalizing. The 2019 Rule penalized certain ages and health statuses and gave far too much authority and discretion to the agency and individual officers to reject potential immigrants on public charge grounds. DHS must not go that route. Weighing a sufficient affidavit of support such that it satisfies the public charge test without more is the simplest way to avoid discrimination and unfair treatment invited by the other public charge factors.

Please see III-C-2 above for further information about how the affidavit of support should be treated in the public charge scheme.

F. Public Benefits Considered

2. Questions for the Public

1. Should DHS consider the receipt of public benefits (past and/or current) in the public charge inadmissibility determination? If yes, how should DHS consider the receipt of public benefits and why?

DHS should not consider past, current, or predicted future public benefits use when evaluating whether an immigrant should be admitted to the United States. Nothing in the INA nor in statutes on public benefits requires that use of public benefits be considered in the public charge analysis of an immigrant seeking admission and public benefits are not an appropriate proxy for public charge.

While this failure to include public benefits may have been expected in 1882 when the language was originally placed in U.S. statute and few federal public benefits existed, in 1952, Congress enacted the Immigration and Nationality Act (INA), which overhauled the nation’s immigration laws, and retained

the “public charge” provision but made no reference to public benefits then available in this country.¹⁰¹ Likewise, in 1996 Congress amended both the INA and the Social Security Act but chose neither to define public charge in relation to public benefits use in the former, nor to relate federal public benefits use by immigrants to public charge in the latter.¹⁰² In fact, efforts to link public benefits use or eligibility to the public charge test have been rejected by Congress more than once.¹⁰³

For the following reasons, we believe that DHS should not pursue by regulation, what Congress chose not to pursue by legislation: to wit, linking past, present, or predicted future public benefits use with the public charge analysis.

- Public Benefits programs reflect myriad policy decisions made by the federal and state governments about topics as wide ranging as support for farmers, sources of health insurance, and whether the minimum wage should be enough to support a family. We as a society have made these policy decisions in order to benefit employers, industries, states, and individuals alike. As with many other forms of federal government supports and subsidies, these benefits are widely used and critical to our national and state economies. For example, the Center on Budget and Policy priorities found that the 2019 Rule’s linkage of benefits and public charge would have made about half of all U.S.-born citizens likely to be deemed a public charge if applied to them.¹⁰⁴ This breadth of benefits use, and the extent to which benefits are embedded in our policy and economic decisions, would contravene any interpretation of the statutory intention behind a public charge test for immigrants. And to create benefits programs that implement our policy choices, and then to bar immigrants from entering the United States based on their potential future eligibility for that scheme (even after they have become citizens) is an absurdity of the highest order.
- Not considering past, present, or future public benefits use will also limit the administrative burden of the public charge determination on both DHS and on the federal and state benefits administering agencies. The I-485 and I-864 forms provide sufficient documentation to assess an applicant’s risk of becoming a public charge. Requesting information on past or present benefits

¹⁰¹ Pub. L. No. 82-414, ch. 2, § 212, 66 Stat. 163, 183.

¹⁰² See Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L.No. 104-208, 110 Stat. 3009 and Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104-193, § 400, 110 Stat. 2105 (1996).

¹⁰³ Congress in considering IIRIRA rejected a proposal to amend the public charge provision addressing deportation to include noncitizens who temporarily charge receive supplemental public benefits. A prior version of the bill would have defined “public charge” to permit deportation if a noncitizen “received Federal public benefits for an aggregate of 12 months over a period of 7 years.” 142 Cong. Rec. S11872, S11882 (daily ed. Sept. 30, 1996) (statement of Sen. Kyl). But this provision was removed under threat of veto. *Id.* at S11881-82. And in 2013, Congress again rejected an attempt to expand the public charge provision beyond its long-established meaning to encompass receipt of supplemental public benefits. Senator Jeff Sessions introduced an amendment that would have “expand[ed] the criteria for ‘public charge,’” requiring noncitizens “to show they were not likely to qualify even for non-cash employment supports such as Medicaid, the SNAP program, or the Children’s Health Insurance Program (CHIP).” S. Rep. No. 113-40, at 42 (2013). This proposal would have meant that “people who received non-cash health benefits could not become legal permanent residents,” and that individuals who are “likely to receive these types of benefits in the future” would be “denied entry.” *Id.* at 63. The amendment was rejected by voice vote. *Id.*

¹⁰⁴ Danilo Trisi, *Administration’s Public Charge Rules Would Close the Door to U.S. to Immigrants Without Substantial Means*, November 11, 2019, <https://www.cbpp.org/research/immigration/administrations-public-charge-rules-would-close-the-door-to-us-to-immigrants>.

use puts a burden on state and federal benefits granting agencies to provide detailed and time-specific information about benefits use that they have neither the funding nor the capacity to bear. Furthermore, a recent OMB report highlights that administrative burdens like onerous paperwork, complex requirements and opaque guidelines are barriers to equity in federal policies.¹⁰⁵ The simple expedient of excluding benefits use from the public charge analysis would help ensure that the implementation of this analysis not violate civil rights laws in the U.S.

- Considering any public benefits in the public charge analysis will lead to a chilling effect, by which immigrants who are not subject to the public charge test will decline to apply for or receive government services and supports out of fear. Researchers agree that perceptions regarding eligibility for safety net programs have an important impact that complex exemptions cannot overcome. Research has shown chilling effects in benefit enrollment before the 2019 Rule went into effect, during implementation of the regulations, and reduced enrollment was observed in programs not included in the 2019 Rule’s definition of “public benefits.”¹⁰⁶ The harm also extends to U.S. citizen children whose parents have disenrolled them from critical programs due to public-charge related fear.¹⁰⁷ The Migration Policy Institute analyzed American Community Survey data for 2016 through 2019 and found that participation in TANF, SNAP, and Medicaid declined far more rapidly for noncitizens than U.S. citizens. This trend held for both the overall and low-income populations. In addition, the share of children receiving benefits under TANF, SNAP, and Medicaid fell about twice as fast among U.S. citizen children with noncitizen household members as it did among children with only U.S. citizens in their household. Eligibility for these programs did not change during this time period.¹⁰⁸
- The chilling effect has significant long-term consequences. Research shows that Medicaid coverage is an essential source of health insurance for tens of millions of Americans, enables enrollees to work and participate in their communities, and supports greater public health. As the

¹⁰⁵ Office of Management and Budget, Study to Identify Methods to Assess Equity: Report to the President, July 2021, https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf.

¹⁰⁶ One study shows implied disenrollment in the Supplemental Nutrition Program for Women, Infants and Children (WIC) despite that program not being implicated in the rule. Jeremy Barofsky, Ariadna Vargas, Dinardo Rodriguez, and Anthony Barrows, “*Spreading Fear: The Announcement of the Public Charge Rule Reduced Enrollment in Child Safety-Net Programs*,” Health Affairs, No. 10, p. 1752-1761, October 2020, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763>. Data from the American Community Survey shows that disenrollment in SNAP and Medicaid accelerated coinciding with the public comment period for the 2019 DHS public charge rule. Randy Capps, Michael Fix, and Jeanne Batalova, “*Anticipated ‘Chilling Effects’ of the Public Charge Rule are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*,” Migration Policy Institute, December 2020, <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

¹⁰⁷ J.M. Haley et al., “*One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*,” Urban Institute, June 2020. Among adults in low-income immigrant families with children, more than 3 in 10 (31.5 percent) reported that they or a family member avoided a public benefit such as SNAP, Medicaid or CHIP, or housing subsidies in 2019 for fear of risking future green card status. Note: this survey was fielded in December 2019, a few months before the COVID-19 pandemic was declared a public health emergency in the United States.

¹⁰⁸ 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>.

Kaiser Family Foundation explains, “by enabling families to meet their health care needs, Medicaid supports families’ ability to work and care for their children.”¹⁰⁹ Studies show that as compared to children without health insurance, children enrolled in Medicaid in their early years have better health, educational, and employment outcomes not only in childhood but also later as adults.¹¹⁰ In fact, Medicaid coverage in early childhood (birth to age 5) is associated with improved health in adulthood (ages 25 to 54), including lower likelihood of high blood pressure, heart disease, adult-onset diabetes, and obesity. Research from Georgetown University’s Center for Children and Families clearly shows that ensuring consistent CHIP coverage for children allows them to grow and thrive, facilitates regular well-baby and well-child visits to track developmental milestones, receive immunizations, and identify and treat acute or chronic conditions so they don’t get worse.¹¹¹ Without coverage, children’s health needs are less likely to be met and they end up missing school, and families living paycheck to paycheck incur medical debt or have to go without care.

- The chilling effect not only harms immigrants and their families, but it puts public health at risk. 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.¹¹² Health Affairs research shows that the 2019 Rule 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.¹¹³ 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 the 2019 Rule, 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. Further, 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

¹⁰⁹ Kaiser Family Foundation, *Changes to “Public Charge” Inadmissibility Rule: Implications for Health and Health Coverage*, (Aug. 2019), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/>.

¹¹⁰ Michel H. Boudreaux et al, *The Long-Term Impacts of Medicaid Exposure in Early Childhood: Evidence from the Program’s Origin*, *J Health Econ.* 2016 January ; 45: 161–175, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4785872/pdf/nihms-761668.pdf>.

¹¹¹ Joan Alker and Anne Dwyer, *Next Steps for the Children’s Health Insurance Program*, Georgetown University Center for Children and Families (Aug. 2021), https://ccf.georgetown.edu/wp-content/uploads/2021/08/CHIP-Next-Steps_fix_10-8.pdf.

¹¹² 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>.

¹¹³ 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>.

will negatively affect their own or a family member's immigration status. The chilling effect reduces access to vaccines, medical care, and other health programs, which increases the risk of COVID-19 and other communicable diseases among the general public, harming us all.

2. Which public benefits should be considered as part of a public charge inadmissibility determination?

No public benefits should be included.

Any public charge determination should exclude all public benefits from consideration. Rather than looking to public benefits use as a proxy, the definition “likely to become primarily and permanently reliant on the federal government to avoid destitution” should guide any assessment of public charge. It is important to be clear that there exists no current federal public benefits program, nor any state funded program in Illinois, that has eligibility rules or benefit amounts such that the use of the benefit by an immigrant would have them meet this definition. Benefits in the United States are extremely limited when compared to other wealthy nations and do not provide primary and permanent relief for individuals and families. We need look no further than PRWORA (discussed at length in response to question III-A-1) to see that Congress has already limited public benefits eligibility and support level to ensure that benefits use is aligned with and reinforces self-sufficiency, rather than supplanting it.

Specifically:

SNAP and TANF Should Be Excluded.

If receipt of a public benefits should only be considered under the public charge test if a recipient is “likely to become primarily and permanently reliant on the federal government to avoid destitution,” then neither the TANF or SNAP programs should be considered. TANF stands for “Temporary Assistance for Needy Families.” As that name suggests by the program’s own terms, receipt of benefits is time limited – in most cases to 60 months.¹¹⁴ Thus, a recipient is almost certain to never become *permanently* reliant on this federal support. It is also not likely that a recipient will become *primarily* reliant on TANF cash assistance—even the small number of the most generous states provide no more than 60 percent of the federal poverty line in cash assistance, with most states giving between 20-40 percent of the poverty line, and about 1/3 providing 20 percent or less.¹¹⁵ No family can subsist on these meager benefits. TANF also has work requirements, with limited exceptions, further suggesting that a TANF recipient is unlikely to be primarily reliant on federal benefits for income support.¹¹⁶

Furthermore, SNAP and WIC-- the two primary federal nutrition benefits – do not provide recipients with a cash benefit. SNAP offers individuals and families the opportunity to access food, while WIC provides both direct food aid and other program services designed to help families thrive. In addition, nearly all SNAP recipients are required to work, with Able Bodied Adults Without Dependents (ABAWDs) limited to receiving SNAP for no more than 3 months out of 36 unless more stringent work requirements are

¹¹⁴ Center for Budget & Policy Priorities, *Policy Basics: Temporary Assistance for Needy Families* (Mar. 31, 2021) <https://www.cbpp.org/research/family-income-support/temporary-assistance-for-needy-families>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

met.¹¹⁷ As a result, receipt of these benefits can in no case be considered to demonstrate primary and permanent reliance on the federal government. Finally, allowing immigrants to access federal nutrition benefits without being at risk of negative public charge consequences would be consistent with the 1999 Interim Field Guidance¹¹⁸ now back in effect. As a result, receipt of these benefits cannot be considered to demonstrate primary and permanent reliance on the federal government. Finally, allowing immigrants to access federal nutrition benefits without being at risk of negative public charge consequences would be consistent with the 1999 Interim Field Guidance.

Medicaid, including use of long-term care services should be excluded from any public charge assessment.

Health care is a human right. Society should reduce barriers to accessing health care rather than build new ones. Medicaid should be excluded from a public charge test for a multitude of reasons which are set forth more fully below.

- **The 1999 Field Guidance supports the exclusion of Medicaid in a public charge rule.** Receipt of health-supporting public benefits, like Medicaid, has been understood to supplement the basic needs of low-income families and support them on the path to self-sufficiency.¹¹⁹ Substantial evidence, upon which the INS relied in its 1999 Field Guidance, supports that people with a broad range of incomes receive public benefits to subsidize basic necessities in order to maintain good health and achieve self-sufficiency: “*Certain Federal, State, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient.*”¹²⁰
- **Including Medicaid in a public charge test would conflict with the current health landscape, where today, Medicaid coverage is an essential source of health insurance for almost one-fifth (17.8%) of our nation’s population.**¹²¹ Medicaid is the country’s most inclusive health care program, providing high quality, affordable health coverage to more than 75.4 million people as of April 2021.¹²² The program is based on a principle that those eligible for Medicaid are guaranteed coverage through the program.¹²³

¹¹⁷ U.S. Dep’t of Agriculture, Food & Nutrition Service, SNAP Work Requirements (last visited Oct. 22, 2021), <https://www.fns.usda.gov/snap/work-requirements>

¹¹⁸ Dep’t of Justice, Immigration & Naturalization Service, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (Mar. 26, 1999), <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>

¹¹⁹ *Id.* at 28, 692.

¹²⁰ *Id.*

¹²¹ Kaiser Family Foundation, Kaiser State Health Facts, *Health Insurance Coverage of the Total Population (CPS)*, <https://www.kff.org/other/state-indicator/health-insurance-coverage-of-the-total-population-cps/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Oct. 22, 2021) (statistics for 2020).

¹²² April 2021 Medicaid & CHIP Enrollment Data Highlights, <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html> (last visited Oct. 22, 2021).

¹²³ Robin Rudowitz, Rachel Garfield & Elizabeth Hinton, 10 Things to Know about Medicaid: Setting the Facts Straight (2019), <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-setting-the-facts-straight/> (last visited Oct. 22, 2021).

- **Including Medicaid in a public charge test would conflict with Medicaid’s purpose: Medicaid was specifically designed to fill in gaps in the private market and provide health insurance coverage where individuals are not offered or cannot afford private coverage.**¹²⁴ Lawmakers have expanded Medicaid, with court approval, since its inception into an integral part of the health coverage landscape in the U.S. Medicaid has fulfilled the explicit policy goals of producing gains in coverage among the low-income population, reducing uninsurance and reducing health disparities by income, age, race, and ethnicity.¹²⁵ These trends hold true for immigrants as much as they do for citizens.¹²⁶ Numerous studies have shown that sharp declines in rates of uninsurance among the low-income population are due to wider availability of Medicaid coverage.¹²⁷
- **Including Medicaid in a public charge test would severely impede access to primary and preventative care (including prenatal care) and obstruct better management of chronic conditions.**¹²⁸ Use of Medicaid’s preventive services translates to earlier detection of disease and illness across age groups; access to providers through Medicaid improves the likelihood that enrollees will receive proper and timely treatment for their conditions.¹²⁹ Research shows better access to primary care through Medicaid leads to more utilization of ambulatory sites of care and improved medication adherence.¹³⁰ Medicaid also improves rates of diagnosis, leads to more consistent care for chronic conditions, and enhances the probability of receiving optimal surgical care.¹³¹ Medicaid enrollees better manage chronic conditions than do uninsured individuals.¹³² For example, uninsured or underinsured patients suffer greater neurological impairment due to a stroke;¹³³ are more likely to

¹²⁴ See e.g., 42 U.S.C. §§ 1396r-6, 1396e-1.

¹²⁵ Larisa Antonisse *et al.*, The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review 2-3 (2018), <https://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review>.

¹²⁶ Kaiser Family Foundation, Health Coverage of Immigrants, (July 15, 2021), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.

¹²⁷ Larisa Antonisse *et al.*, The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review, KAISER FAMILY FOUND. (2018) <https://www.kff.org/medicaid/issue-brief/theeffects-of-medicicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march2018/>.

¹²⁸ Kaiser Family Found., Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage (2018), <https://files.kff.org/attachment/Issue-Brief-Proposed-Changes-to-Public-Charge-Policies-for-Immigrants-Implications-for-Health-Coverage>.

¹²⁹ Health.gov, Office of Disease Prevention and Health Promotion, Healthy People 2020: Access to Health Services (2018), <https://www.healthypeople.gov/2020/leading-health-indicators/2020-lhi-topics/Access-to-Health-Services>;

Julia Paradise, Data Note: Three Findings about Access to Care and Health Outcomes in Medicaid, KAISER FAMILY FOUND. (2017), <https://www.kff.org/medicaid/issue-brief/data-note-three-findings-about-access-to-care-and-health-outcomes-in-medicicaid/>. Katherine Baicker *et al.*, The Oregon Experiment — Effects of Medicaid on Clinical Outcomes. 368 NEW ENG. J MED. 1713 (2013), <https://www.nejm.org/doi/pdf/10.1056/NEJMsa1212321>.

¹³⁰ Benjamin D. Sommers *et al.*, Health Insurance Coverage and Health – What the Recent Evidence Tells Us, 377 NEW ENG J. MED. 586 (2017), <https://www.nejm.org/doi/pdf/10.1056/NEJMs1706645>.

¹³¹ Larisa Antonisse *et al.*, The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review, KAISER FAMILY FOUND. (2018), <https://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review>.

¹³² Benjamin D. Sommers *et al.*, Health Insurance Coverage and Health – What the Recent Evidence Tells Us, 377 NEW ENG J. MED. 586 (2017), <https://www.nejm.org/doi/pdf/10.1056/NEJMs1706645>.

¹³³ Rice T, LaVarreda, SA, Ponce NA, Brown ER. The impact of private and public health insurance on medication use for adults with chronic diseases. *Med Care Res Rev* 2005; 62(1): 231-249.

be diagnosed with later stage cancer;¹³⁴ to have worse glycemic control when diagnosed with diabetes; to be unable to fully recover following a serious injury; and to have a higher mortality risk due to congestive heart failure.¹³⁵ Insured individuals have more usual source of care and less tendency to delay seeking medical care¹³⁶ and being less likely to visit the emergency department.¹³⁷

- **Including Medicaid in a public charge test would conflict with the reality of today’s employment landscape¹³⁸ where access to comprehensive, affordable health insurance is often determined by factors beyond an individual’s control and for most people, depends on whether an employer offers coverage.**¹³⁹ Many, if not most, Medicaid enrollees are low-wage workers who lack employer-sponsored coverage options or affordable individual marketplace or private coverage options.¹⁴⁰ Less than one-third of low-income workers have employer-sponsored health insurance, whereas almost two-thirds of higher-income workers receive such benefits.¹⁴¹ These trends drive higher uninsurance rates among the low-wage worker population.¹⁴²
- **Including Medicaid in a public charge test is unfair and in conflict with the reality that our country does not require employers to pay a federal minimum wage that is sufficient for a family to grow and thrive.** Among the bottom 90 percent of wage earners, the average annual wage

¹³⁴ E Ward et al, Association of Insurance with Cancer Care Utilization and Outcomes. *CA: A Cancer Journal for Clinicians* 58:1 (Jan./Feb. 2008), <http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care>.

¹³⁵ McWilliams JM, Meara E, Zaslavsky AM, Ayanian JZ. Health of previously uninsured adults after acquiring Medicare coverage. *JAMA*. 2007; 298:2886–2894.

¹³⁶ MACPAC, Access and Quality/Key Findings on Access to Care (2018) <https://www.macpac.gov/subtopic/measuring-and-monitoring-access>.

¹³⁷ Winston Liaw et al., The Impact of Insurance and a Usual Source of Care on Emergency Department Use in the United States, 2014 *INT. J. FAMILY MED.* 1 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3941574/pdf/IJFM2014-842847.pdf>; Tina Hernandez-Boussard et al., The Affordable Care Act Reduces Emergency Department Use By Young Adults: Evidence From Three States, 33 *HEALTH AFFAIRS* 1648 (2014), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2014.0103>.

¹³⁸ *New York v. U.S. Dep’t of Homeland Security*, No. 19-3591, at 99 (2nd Cir. 2020) (“Some families may actually fail to meet these basic needs without government support. But these programs sweep more broadly than just families on the margin, encompassing those who would no doubt keep their families fed and housed without government support but are able to do so in a healthier and safer way because they receive supplemental assistance. See *Cook Cty.*, 962 F.3d at 232 (noting that the benefits covered by the Rule ‘are largely supplemental’ and that ‘[m]any recipients could get by without them’ (emphasis omitted)). Accepting help that is offered to elevate one to a higher standard of living, help that was created by Congress for that precise purpose, does not mean a person is not self-sufficient – particularly when such programs are available not just to persons living in abject poverty but to a broad swath of low- and moderate-income Americans, including those who are productively employed.”)

¹³⁹ *Id.* at 97 (“While the Rule declares non-citizens dependent for using Medicaid instead of private health insurance, it cannot be ignored that in this country, access to private healthcare depends for many people on whether an employer offers coverage. See National Housing Law Project Amicus Br. at 22 (noting that roughly 40% of employed Medicaid beneficiaries work for small businesses, many of which are not legally required to provide health insurance).)

¹⁴⁰ Rachel Garfield et al., Understanding the Intersection of Medicaid and Work, KAISER FAMILY FOUND. (2018), <https://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>.

¹⁴¹ Alanna Williamson et al., ACA Coverage Expansions and Low-Income Workers, KAISER FAMILY FOUND. (2016), <https://www.kff.org/report-section/aca-coverage-expansions-and-low-income-workers-issue-brief/>.

¹⁴² *Id.*

is \$38,923 in 2019.¹⁴³ Today, the federal poverty level is \$26,500 for a family of four.¹⁴⁴ For perspective, families can earn the federal minimum wage and yet remain in poverty. Furthermore, low-wage jobs comprise a growing share of the U.S. workforce demands: almost one third of all workers earn under \$12 per hour, and over half of these workers are women.¹⁴⁵ A significant number of adult Medicaid enrollees are low-wage workers whose income is still low enough to qualify for Medicaid.¹⁴⁶ In fact, studies show that more than 60% of Medicaid beneficiaries who are not children, older adults, or people with disabilities are employed.¹⁴⁷ Even accounting for coverage gains under Medicaid expansion, health insurance coverage rates for low-wage workers lag behind that of relatively higher-wage workers.¹⁴⁸ Because our country does not require employers to pay a sufficient wage to support a family nor are employers of every size required to provide affordable health insurance coverage, Medicaid is designed to fill the resulting healthcare coverage gap.

- Immigrant women in particular are concentrated in low-wage occupations, such as domestic workers and housekeepers, cashiers, personal care aides, and nursing, psychiatric, and home health aides.¹⁴⁹ Focusing on the low-pay in just one of these industries: a full 25 percent of home health aides are foreign-born and a third receive public benefits.¹⁵⁰ If immigrant workers forgo health coverage due to concerns about immigration consequences stemming from public charge, they will miss more days of work, burdening their employers and the vulnerable people for whom they provide care.¹⁵¹ Moreover, it is widely recognized that there will be an increased need for home care workers as the U.S. population ages.¹⁵²
- **Including Medicaid in a public charge test would create financial instability because the protections that Medicaid provides allows those in low-wage jobs and their families to engage in and contribute to their communities without being saddled with debilitating medical costs.** Medicaid improves individuals' and families' spending habits to increase savings

¹⁴³ Wages for Top 1.0%, 0.1% and Bottom 90%, Updated December 2020, available at: <https://www.epi.org/data/#?subject=wagegroup>.

¹⁴⁴ Office of the Assistant Secretary for Planning and Evaluation, HHS Poverty Guidelines for 2021, available at: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

¹⁴⁵ Economic Policy Institute and Oxfam America, Few Rewards: An Agenda to Give America's Working Poor a Raise (2016), https://www.oxfamamerica.org/static/media/files/Few_Rewards_Report_2016_web.pdf.

¹⁴⁶ Rachel Garfield et al., Understanding the Intersection of Medicaid and Work, KAISER FAMILY FOUND. (2018), <https://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>.

¹⁴⁷ Rachel Garfield et al., Understanding the Intersection of Medicaid and Work: What Does the Data Say?, (Aug. 2019) <https://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work-What-Does-the-Data-Say>; see also Hannah Katch, Jennifer Wagner & Aviva Aron-Dine, Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families' Access to Care and Worsen Health Outcomes, (Aug. 13, 2018), <https://www.cbpp.org/research/health/taking-medicaid-coverage-away-from-people-not-meeting-work-requirements-will-reduce>.

¹⁴⁸ Alanna Williamson et al., ACA Coverage Expansions and Low-Income Workers, KAISER FAMILY FOUND. (2016), <https://www.kff.org/report-section/aca-coverage-expansions-and-low-income-workers-issue-brief/>.

¹⁴⁹ American Immigration Council, The Impact of Immigrant Women on America's Labor Force, March 2017 (2017), <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>.

¹⁵⁰ PHI, U.S. Home Health Care Workers: Key Facts, available at: <https://phinational.org/wp-content/uploads/legacy/phi-home-care-workers-key-facts.pdf>.

¹⁵¹ *Id.*

¹⁵² *Id.*

and direct more spending towards food and housing¹⁵³ rather than health care expenses.¹⁵⁴ Medicaid also strengthens families' finances by reducing financial strain.¹⁵⁵ Rather than be a predictor of poverty, Medicaid coverage improves individual financial health and stability and makes it easier for enrollees to seek employment¹⁵⁶ and to keep working.¹⁵⁷ also Medicaid protects low-income individuals and families against the prospect of unpredictable and unexpected high medical costs that could otherwise consume a large portion of their finances.¹⁵⁸

- Medicaid's positive socioeconomic and fiscal effects are especially pronounced for women. Research shows that receipt of Medicaid in childhood especially improves women's rates of employment and annual wages and reduces the need for and use of public assistance later in life.¹⁵⁹ By age 28, each additional year of Medicaid eligibility for girls increases their cumulative adulthood wage by approximately \$650 and their cumulative tax payment by almost \$250, while decreasing EITC payments by over \$100.¹⁶⁰
- **To penalize use of any health coverage program—but particularly Medicaid—in a public charge assessment also puts medical care providers and public health workers in untenable positions.** Physicians and other clinicians are trusted sources of information for patients. This may be especially true for immigrant populations who are unfamiliar with the US medical system. If Medicaid and other public health insurance programs are penalized in any new public charge rule, health care providers and public health workers will be greatly challenged in providing counsel regarding health care for their patients. For example, if use of Medicaid is

¹⁵³ Karina Wagnerman et al., Medicaid Is A Smart Investment in Children, GEORGETOWN CTRS. FOR CHILDREN AND FAMILIES (2017), <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>

¹⁵⁴ Benjamin D. Sommers et al., Health Insurance Coverage and Health – What the Recent Evidence Tells Us, 377 NEW ENG J. MED. 586 (2017), <https://www.nejm.org/doi/pdf/10.1056/NEJMs1706645>; Margot Sanger-Katz, 1,495 Americans Describe the Financial Reality of Being Really Sick, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/upshot/health-insurance-severely-ill-financial-toxicity-.html>.

¹⁵⁵ Melissa Majerol et al., Health Care Spending Among Low-Income Households with and without Medicaid, KAISER FAMILY FOUND. (2016), <https://www.kff.org/medicaid/issue-brief/health-care-spending-among-low-income-households-with-and-without-medicaid/>; Aaron Carroll, Medicaid as a Safeguard for Financial Health, JAMA FORUM (Nov. 28, 2018), <https://newsatjama.jama.com/2018/11/28/jama-forum-medicaid-as-a-safeguard-for-financial-health/>; Sarah Miller et al., The ACA Medicaid Expansion in Michigan and Financial Health, Working Paper 25053, NAT'L BUREAU OF ECON. RES. (2018), <https://www.nber.org/papers/w25053.pdf>.

¹⁵⁶ Larisa Antonisse et al., The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review, KAISER FAMILY FOUND. (2018), <https://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review/>.

¹⁵⁷ *Id.*

¹⁵⁸ Benjamin D. Sommers et al., Health Insurance Coverage and Health – What the Recent Evidence Tells Us, 377 NEW ENG J. MED. 586 (2017), <https://www.nejm.org/doi/pdf/10.1056/NEJMs1706645>; Katherine Baicker et al., The Oregon Experiment — Effects of Medicaid on Clinical Outcomes. 368 NEW ENG. J MED. 1713 (2013), <https://www.nejm.org/doi/pdf/10.1056/NEJMs1212321>. See also Margot Sanger-Katz, 1,495 Americans Describe the Financial Reality of Being Really Sick, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/upshot/health-insurance-severely-ill-financial-toxicity-.html>.

¹⁵⁹ David W. Brown et al., Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?, Working Paper 20835, NAT'L BUREAU OF ECON. RES. (2015), <https://www.nber.org/papers/w20835.pdf>; Andrew Goodman-Bacon, The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes, Working Paper 22899, NAT'L BUREAU OF ECON. RES. (2016), <https://www.nber.org/papers/w22899.pdf>.

¹⁶⁰ *Id.*

penalized in a public charge assessment, what should a health care provider advise the 50-year-old prospective green card applicant, with two children born in the United States, who has hypertension and type 2 diabetes? Should the applicant forgo using her Medicaid card to pay for her oral medications, not use her coverage to visit the ophthalmologist to check for retinal disease, a mammogram, and cervical cancer screening, even though all these services advance her quality of life, ability to work and increase her chances of staying with her children? Can she even be advised about whether to remain enrolled in Medicaid without an immigration attorney in the room?

- **Including Medicaid in any public charge test will continue the harmful chilling effects of the 2019 Rule.** Federal immigration policy and its intersection with public benefits is difficult for even U.S. citizens with advanced degrees to decipher, let alone the average prospective green card applicant. Research of decision-making under the proposed and final public charge rule from the previous administration showed that prospective green card applicants are unlikely to understand the difference in how various services covered under Medicaid are treated by the public charge test: those who disenroll from Medicaid do so because of fear of poor treatment and adverse immigration effects stemming from use of such benefits.¹⁶¹ Specifically, Latinx immigrants are more likely to be eligible but unenrolled due to fears of immigration actions.¹⁶²
- **Including Medicaid in a public charge test would harm states: Medicaid yields macro-level benefits for states and society overall:** Research shows that for states that have expanded Medicaid, the percentage of people with medical debt, the average size of medical debt, the probability of new bankruptcy filings, and the number and frequency of medical bills going to collections have all decreased, while credit scores have improved.¹⁶³ These financial benefits of Medicaid were experienced across age groups¹⁶⁴ has been shown across states,¹⁶⁵ including

¹⁶¹ Jennifer Stuber & Karl Kronebusch, Stigma and other determinants of participation in TANF and Medicaid, 23 J. POL'Y ANALYSIS & MGMT. 509 (2004), available at: <https://pubmed.ncbi.nlm.nih.gov/15218879/>; Claudia Schlosberg & Dinah Wiley, Nat'l Health Law Prog. and NILC, The Impact of INS Public Charge Determinations on Immigrant Access to Health Care (1998), available at:

<https://www.montanaprobono.net/geo/search/download.67362> ; Marilyn R. Ellwood & Leighton Ku, Welfare And Immigration Reforms: Unintended Side Effects For Medicaid, 17 HEALTH AFFAIRS 137 (1998), available at: <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.17.3.137>. See, e.g., Andrew Hammond, The Immigration-Welfare Nexus in a New Era?, 22 LEWIS & CLARK L. REV. 501, 503 (2018). See, e.g., Samantha Artiga et al., Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid, KAISER FAM. FOUND., 3 (2018), <https://www.kff.org/report-section/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage-key-findings> [<https://perma.cc/2YLJ-375F>]. Jeanne Batalova et al., Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, MIGRATION POL'Y INST. (2018), <https://www.migrationpolicy.org/sites/default/files/publications/ProposedPublicChargeRule-Final-Web.pdf>.

¹⁶² Jennifer P. Stuber et al., Beyond Stigma: What Barriers Actually Affect the Decisions of Low-Income Families to Enroll in Medicaid?, THE GEORGE WASHINGTON UNIVERSITY SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES (2000), https://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?article=1052&context=sphhs_policy_briefs.

¹⁶³ Rudowitz & Antonisse, supra note 58. See also Kyle J. Caswell & Timothy A. Waidmann, The Affordable Care Act Medicaid Expansions and Personal Finance, MEDICAL CARE RES. & REV. (2017), <https://journals.sagepub.com/doi/pdf/10.1177/1077558717725164>.

¹⁶⁴ Luojia Hu et al., The effect of the affordable care act Medicaid expansions on financial wellbeing, 163 J. PUB. ECON. 99 (2018), <https://www.nber.org/papers/w22170.pdf>.

¹⁶⁵ Sarah Miller et al., The ACA Medicaid Expansion in Michigan and Financial Health, Working Paper

leading to growth in jobs with average pay higher than the poverty level.¹⁶⁶ The Kaiser Family Foundation notes in a comprehensive literature review that “national, multi-state, and single state studies show that states expanding Medicaid under the ACA have realized budget savings, revenue gains, and overall economic growth.”¹⁶⁷ These state savings arise as Medicaid offsets other state costs, such as costs from behavioral health services, criminal justice, and receipt of Supplemental Security Income.¹⁶⁸ This means that Medicaid not only produces positive economic effects¹⁶⁹ for its enrollees, but also for the communities in which enrollees live. These findings are especially important given the net positive effect that immigrants have on local economies: each immigrant creates 1.2 local jobs for local workers.¹⁷⁰ Thus, immigration itself has a sort of multiplier effect for local economies. But if immigrants are chilled from using public benefits, such as Medicaid, they are less able to work, save, and spend in the local community.

- **To disincentivize eligible immigrants from enrolling in Medicaid would contribute to the already significant inefficiencies in the health care landscape for which Medicaid corrects.** Medicaid reduces the costs of otherwise avoidable and unnecessary medical care, thereby lowering the overall amounts of uncompensated care that would otherwise be shouldered by the safety net provider system and ensuring a healthier and more productive workforce.¹⁷¹

Use of Medicaid for long-term care must be excluded from any public charge assessment.

- Many people who live long lives ultimately need institutional long-term care; to include its use in any public charge assessment is in marked conflict with the reality of today’s health care landscape. Given a long enough time horizon, a significant percentage of the population is at risk of needing government-sponsored long-term care due to accident, illness or advanced age. Consider a young person right now who has a high school or even college education and is currently employed—there is significant likelihood that this person may still need long-term care paid for by the government in their later years. Currently, over 7 million U.S. residents age 65

25053, NAT’L BUREAU OF ECON. RES. (2018), <https://www.nber.org/papers/w25053.pdf>; Ohio Dept. of Medicaid, Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly (2016), https://medicaid.ohio.gov/wps/wcm/connect/gov/b0779c0a-5061-45f9-b441-9bf06e2f0070/Group-VIII-Assessment.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HG GIK0N0JO0QO9DDDDM3000-b0779c0a-5061-45f9-b441-9bf06e2f0070-nAURfx.

¹⁶⁶ Larisa Antonisse et al., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review*, KAISER FAMILY FOUND. (2018) <https://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review/>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See Kaiser Family Found., *The Role of Medicaid in State Economies: A Look at the Research* (2004), <https://www.kff.org/wp-content/uploads/2013/01/the-role-of-medicaid-in-state-economies-a-look-at-the-research-policy-brief.pdf>; Kaiser Family Found., *The Role of Medicaid in State Economies: A Look at the Research* (2009), <https://www.kff.org/medicaid/issue-brief/the-role-of-medicaid-in-state-economies/>

¹⁷⁰ Gihoon Hong & John McLaren, *Are Immigrants a Shot in the Arm for the Local Economy?*, Working Paper 21123, NAT’L BUREAU OF ECON. RES. (2015), <https://www.nber.org/papers/w21123.pdf>

¹⁷¹ See, e.g., Kathleen Gifford et al., *States Focus on Quality and Outcomes Amid Waiver Changes: Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2018 and 2019*, KAISER FAMILY FOUND. (2018), <https://www.kff.org/medicaid/report/states-focus-on-quality-and-outcomes-amid-waiver-changes-results-from-a-50-state-medicaid-budget-survey-for-state-fiscal-years-2018-and-2019>; Nat’l Ass’n of Medicaid Directors, *State Medicaid Operations Survey: Sixth Annual Survey of Medicaid Directors, FY 2017* (2018), https://medicaiddirectors.org/wp-content/uploads/2018/09/NAMD-Survey-Report_General_FINAL.pdf.

and older are enrolled in Medicaid (of a total of over 80 million individuals).¹⁷² Medicaid is the primary payer for long-term care in the US, covering six in ten nursing home residents.¹⁷³ DHS should not penalize use of Medicaid's long term care services, which if applied to the entire U.S. population would penalize millions of people.

- Factoring in long-term care services in the public charge determination is clearly discriminatory against older adults and people with disabilities. While age is *an* enumerated factor in the Immigration and Nationality Act, 8 U.S.C. 1182(a)(4)(B), it is not be a *determinative* factor. Given that most older adults will need some form of long-term care and that Medicaid funds the vast majority of these services in the U.S., considering government funded long-term care would unjustly give greater weight to the age factor in the public charge determination.
 - According to the CDC, 40% of adults age 65 and older in the U.S. have a disability.¹⁷⁴ Rates of disability are even higher among Black, American Indian/Alaska Native and Hispanic/Latino older adults. Many of these individuals need or will need assistance with activities of daily living as they age either at home or in an institution. Medicaid continues to be the only option for older adults in the U.S. because Medicare and private health insurance do not cover long-term care, private long-term care insurance is unattainable for most individuals, and the out-of-pocket costs for long-term care are unsustainable.¹⁷⁵ We should also not penalize immigrants for our national policy choices that make Medicaid the only meaningful payer for long-term care and make it difficult to get care at home, essentially forcing people into institutional care.
- Factoring government-funded institutional care is even more acutely discriminatory against older adults. While our long-term care system and civil rights have evolved to allow many people with disabilities to get support at home, the majority of our government funding for long-term care services for older adults, because of a systemic bias, still goes toward institutional care.¹⁷⁶ In fact, according to the Kaiser Family Foundation, one in three people turning 65 will require nursing home care in their lives, and Medicaid covers six in ten nursing home residents.¹⁷⁷

¹⁷² Kaiser Family Foundation Health Facts for FY2019, available at: <https://www.kff.org/medicaid/state-indicator/distribution-of-medicaid-enrollees-by-enrollment-group/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹⁷³ Kaiser Family Foundation, Medicaid's Role in Nursing Home Care, June 2017, available at:

<https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>

¹⁷⁴ CDC, Disability Impacts All of Us, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>; Okoro CA, Hollis ND, Cyrus AC, Griffin-Blake S. Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults — United States, 2016. *MMWR Morb Mortal Wkly Rep* 2018; 67:882–887, <https://www.cdc.gov/mmwr/volumes/67/wr/mm6732a3.htm>.

¹⁷⁵ As of 2015, only 8% of Americans purchased private long-term care insurance and there has been a decline in the market, in part due to the high premium costs and a lack of insurers. The costs for long-term care are so high that individuals pay for long-term care out of pocket “until they qualify for Medicaid”—meaning they have spent down their remaining resources to afford long-term care. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Long Term Services and Supports for Older Americans: Risks and Financing Research Brief, (June 30, 2015), <https://aspe.hhs.gov/reports/long-term-services-supports-older-americans-risks-financing-research-brief-0>.

¹⁷⁶ Justice in Aging, Medicaid Home- and Community-Based Services for Older Adults with Disabilities: A Primer (Apr. 2021), <https://justiceinaging.org/wp-content/uploads/2021/04/HCBS-Primer.pdf>.

¹⁷⁷ Kaiser Family Foundation, Medicaid's Role in Nursing Home Care (June 2017), <https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>.

- Furthermore, the long-term care infrastructure in the U.S. inequitably forces older adults of color into nursing facilities, creating racial disparities in how long-term care is delivered. Not only are dementia rates higher among Black and Hispanic older adults (a factor which exponentially increases the likelihood of institutionalization), but inequitable access to affordable and accessible housing creates a disproportionate barrier for low-income older adults of color to receiving in-home long-term care.¹⁷⁸ Considering Medicaid funded institutional long-term care in the public charge determination disproportionately disadvantages immigrants of color and erroneously introduces race as a factor in the determination. We should not penalize immigrants for the problems in the U.S.’s long-term care system that make it difficult to get care at home and force people into institutional care or the problems of systemic racism in the U.S. healthcare system that contribute to disproportionate rates of institutionalization in communities of color.
- Penalizing long-term care institutionalization paid for by Medicaid in a public charge test creates a dangerous disincentive for immigrants for whom enrollment and use of Medicaid health insurance is often their *only* option for affordable comprehensive health coverage. Medicaid is not welfare; it is a source of insurance coverage.
- At the very least, do not penalize the use of exclusively-state-funded long-term care utilization in a public charge test. Inclusion of exclusively-state funded benefits interferes with a state’s discretion to set its own policies and undermines policies and services states want to provide. In Illinois, almost one in five foreign-born residents (18%) are age 65 or older.¹⁷⁹ Illinois deeply values the health of its older adult population, creating and funding Medicaid-like health coverage programs for adults aged 55 and older, regardless of their immigration status. The state’s Medicaid program pays for nursing facility care for approximately 45,000 Medicaid enrollees each year; Medicaid pays for approximately 60% of all nursing facility days in Illinois and is the largest payor of days in both the state and in the nation.¹⁸⁰ Illinois officials have submitted comments advocating for the exclusion of exclusively-state funded benefits as well (see comments submitted by Illinois Department of Healthcare and Family Services, for example). Additionally, there is some support in case law that an individual housed in a long-term care facility being paid for by the government is still not categorically a public charge if the state had not sought payment and been unable to collect.¹⁸¹

SSI benefits use should not be considered as predictive of being a public charge.

First and foremost, we note that using the past, present, or potential future use of SSI by a person with a disability as part of a public charge analysis cannot be reconciled with the prohibitions against disability

¹⁷⁸ Justice in Aging, *supra* note 8.

¹⁷⁹ Migration Policy Institute Data Hub, State Immigration Data Profiles, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/IL>.

¹⁸⁰ A Comprehensive Review of Nursing Home Payment with Recommendations for Reform Report to the Illinois General Assembly, In Accordance with Requirement in 305 ILCS 5/5-2.10, Illinois Department of Healthcare and Family Services, September 30, 2021, available at: <https://www2.illinois.gov/hfs/SiteCollectionDocuments/HFSComprehensiveReviewOfNursingHomePaymentWithRecommendationsForReform.pdf>.

¹⁸¹ *New York v. U.S. Dep’t of Homeland Security*, No. 19-3591, at 75 (2nd Cir. 2020) (“*Matter of B-* held that even an immigrant who had been institutionalized at public expense because she *was* unable to care for herself and was likely to require permanent hospitalization, *still* was not categorically a public charge if the state had not sought payment and been unable to collect.”)(emphasis in original).

discrimination in Section 504 of the Rehabilitation Act described above. Just as importantly, United States culture and law have moved far away from the now repugnant ideas about people labelled “lunatics” or “idiots” when public charge entered our statute and it is morally unacceptable to subject immigrants to bias’s about disability that we have long abandoned in our nation. Additional elements that make SSI an inappropriate factor in a public charge analysis include:

- People with disabilities who receive SSI are also part of our nation’s workforce and should not be excluded based on SSI use. In fact, there are multiple federal work incentives programs that help people receiving SSI go to work by minimizing the risk of losing their SSI or Medicaid benefits.¹⁸²
- In much of Illinois, SSI benefits are inadequate to meet a person’s basic needs and cannot be accurately characterized as keeping them from destitution. It is their own earnings and non-governmental support (both of which defeat a claim of public charge) upon which they rely.
- The eligibility rules for SSI limit an individual to having assets of less than \$2001. Forcing someone to forgo the right to save for a rainy day in exchange for receiving disability benefits and then penalizing them for their poverty in a public charge analysis creates an unacceptable and discriminatory catch 22.
- The SSI program conducts regular continuing reviews of disability in recognition of the fact that the health of people with disabilities is not static, nor is their use of benefits. This programmatic acknowledgment directly contradicts the idea that a person on SSI be considered a public charge.

In sum, PRWORA and IIRIRA make clear the statutory requirements for self-sufficiency and those requirements are not “no benefits use” but instead “benefits use within statutory limits.” As discussed above, these changes to immigration law and federal public benefits rules addressed public charge by requiring an enforceable affidavit of support rather than a public benefits litmus test.

In the event that DHS determines that public benefits are a factor that could bar a person from adjusting status, the agency must provide clear guidance on how adjudicators may consider this issue. Without clear guidance, predicting who is likely to become a public charge “at any time in the future” based on public benefits use is an act of speculation that could lead to decisions influenced by individual bias, inconsistent adjudication of cases that are factually similar, and confusion for immigrants which will create a harmful chilling effect. Specifically, we recommend that adjudicators be directed to look back at an applicant’s use of limited public benefits for a finite lookback period—such as two or three years. Without past or present use of benefits, DHS should direct adjudicators that it is impermissible to predict benefits use in the future and to use that prediction in the public charge analysis.

3. Which public benefits, if any, should not be considered as part of a public charge inadmissibility determination?

No public benefits should be considered. See answers above.

¹⁸² Social Security Administration, Understanding Supplemental Security Income Work Incentives, <https://www.ssa.gov/ssi/text-work-ussi.htm>

4. How should DHS address the possibility that individuals who are eligible for public benefits, including U.S. citizen relatives of noncitizens, would forgo the receipt of those benefits as a result of DHS’s consideration of certain public benefits in the public charge inadmissibility determination? What data and information should DHS consider about the direct and indirect effects of past public charge policies in this regard?

Research has confirmed that the lead up to and rollout of the 2019 Rule created a pronounced and persistent "chilling effect," that caused immigrants and their family members to disenroll from or fail to enroll in critical health, nutrition, and economic supports for which they were eligible. The 2019 Rule took effect just weeks before the COVID-19 pandemic hit the United States, which has amplified the health and economic harm of the pandemic. The following research strongly supports swift rulemaking that sets clear public charge parameters and addresses the chilling effect.

Heading into the COVID-19 pandemic, survey and program data confirmed that the chilling effects of 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.¹⁸³
- The Migration Policy Institute analyzed American Community Survey data for 2016 through 2019 and found that participation in TANF, SNAP, and Medicaid declined far more rapidly for noncitizens than U.S. citizens. This trend held for both the overall and low income populations. In addition, the share of children receiving benefits under TANF, SNAP, and Medicaid fell about twice as fast among U.S. citizen children with noncitizen household members as it did among children with only U.S. citizens in their household. Eligibility for these programs did not change during this time period.¹⁸⁴
- 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.
- Research published in Health Affairs found evidence of the causal effect of the announcement of the 2019 Rule on access to public benefits. The researchers’ analysis of state-reported data shows

¹⁸³ 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>.

¹⁸⁴ 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>.

that the announcement of the public charge regulations was associated with a decrease in Medicaid enrollment of approximately 260,000 children from 2017 levels.¹⁸⁵

- In a subsequent special immigrant-focused edition of Health Affairs, research shows that the 2019 Rule 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.¹⁸⁶
- 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.¹⁸⁷

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

- In December 2020, the Urban Institute found that adults in low-income immigrant families had suffered serious employment impacts from the economic crisis (51.8 percent), had experienced high rates of food insecurity in the past year (41.4 percent), and were worried about meeting their basic needs in the next month, including having enough to eat (43.2 percent) and being able to pay rent or a mortgage (50.8 percent), utility bills (49.1 percent), or medical costs (52.1 percent). Despite facing disproportionate hardships throughout the pandemic, more than 1 in 4 adults in low-income immigrant families (27.5 percent) reported they or a family member avoided noncash benefits or other help with basic needs because of green card or other immigration concerns in 2020.¹⁸⁸

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

- Based on a survey of 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

¹⁸⁵ 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>.

¹⁸⁶ 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>.

¹⁸⁷ 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” (Dec. 2020), https://frac.org/wp-content/uploads/NILC_Latinx-Immigrant-Families.pdf.

¹⁸⁸ 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.

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.¹⁸⁹

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.¹⁹⁰

G. Previous Rulemaking Efforts

2. Questions for the Public

1. What aspects of the 1999 Interim Field Guidance, if any, should be included in a future public charge inadmissibility rulemaking and why?

- The 1999 Interim Field Guidance did not apply to visa holders/ nonimmigrants extending or changing their status. The NPRM should also propose excluding visa holders/ nonimmigrants from extending or changing their status, from a public charge determination.
 - The 2019 Rule required, for the first time, that nonimmigrants seeking to extend or change their nonimmigrant status to undergo a public charge test.¹⁹¹ Although few nonimmigrants qualify for the benefits considered under the rule, this requirement added to the fear and confusion that prevented eligible immigrants and family members from securing critical services. DHS should propose specific regulatory text clarifying that the public charge ground of inadmissibility does not apply to visa holders or nonimmigrants seeking to extend or change their statuses. There three main reasons for this:
 - Aligns with current policy: Neither the 1999 Field Guidance nor the statute requires nonimmigrants seeking to extend or change their nonimmigrant status to undergo a public charge test.
 - Would be duplicative of the visa eligibility process: Applying this rationale to people with nonimmigrant visas is not necessary because financial sufficiency is already built into nonimmigrant visa eligibility for most categories. Many nonimmigrant visas already require proof of financial sufficiency. For example, students with F-1 and M-1 visas must provide evidence of sufficient funds for self-support during the course of study.¹⁹² And, the B-1 and B-2 tourists need to

¹⁸⁹ Hamutal Bernstein, Jorge Gonzalez-Hermoso, Dulce Gonazalez, Jahnvi Jagannath, Urban Institute, “[Immigrant-Serving Organizations’ Perspectives on the COVID-19 Crisis](#)” August 2020.

¹⁹⁰ 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.

¹⁹¹ Department of Homeland Security, Final Rule, “Inadmissibility on Public Charge Grounds,” August 14, 2019, p. 41329, available at: <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds> (at 8 CFR § 214.1 and 8 CFR § 248.1).

¹⁹² *Id.*

show they have adequate means of financial support during their stay.¹⁹³ Further, by definition, most employment-based nonimmigrant visas mandate sponsorship and compensation by employers. If in the future they seek to become an LPR via, e.g., a family-based petition, they would need to undergo a public charge determination.

- Would waste limited agency resources: Subjecting tens of thousands of nonimmigrants to application questions and adjudications about use of benefits that they are very unlikely to be eligible for is not a good use of USCIS resources, and places unnecessary burdens on applicants, benefit agencies and USCIS.¹⁹⁴

In addition, The 1999 Field Guidance indicated that most LPRs who have been outside the United States for 180 days or less are not applicants for admission and therefore are not subject to the grounds of inadmissibility, pursuant to section 101(a)(13)(C) of the INA.¹⁹⁵ It indicated that, absent an indication that they may be applicants for admission, such LPRs should not routinely be questioned on issues related to the likelihood that they will become a public charge.

- Although the public charge inadmissibility ground may apply to returning residents who fall outside the 180-day absence threshold before a reentry will constitute a new admission under 8 U.S.C. 1101(a)(13)(C), DHS should exercise its prosecutorial discretion in the investigative questioning process for these individuals. This can be done by a) establishing a presumption that returning residents who have not been placed in removal for allegedly abandoning residence or for criminal or other grounds of removal that constitute a new admission under section 1101(a)(13)(C) shall not be questioned about public charge inadmissibility issues absent a reasonable suspicion based on articulable facts that the individual has been convicted of fraud or other criminal activity in obtaining public benefits prior to departure and the receipt of benefits occurred while in a status that was not exempt or protected by law against public charge inadmissibility grounds.
- Section 8 U.S.C. 1101(a)(13)(C) provides that an LPR seeking admission to the U.S. is not an applicant for admission unless the applicant: (i) has abandoned or relinquished that status; (ii) has been absent for more than 180 days; (iii) has engaged in illegal activity after leaving the U.S.; (iv) left the U.S. while in removal proceedings; (v) has committed certain offenses in the U.S.; or (vi) is attempting to enter other than at a port of entry or has not been admitted to the U.S. after inspection and authorization.” For long-time permanent residents seeking admission under this standard, the chilling effect of the public charge doctrine can fall with particular severity, including those who received benefits or were rendered destitute by events which occurred while in an exempt status.

¹⁹³ U.S. Citizenship and Immigration Services, “Students and Employment,” February 6, 2018; Congressional Research Service, “Noncitizen Eligibility for Federal Public Assistance: Policy Overview,” December 12, 2016, available at: <https://fas.org/sgp/crs/misc/RL33809.pdf>

¹⁹⁴ In 2019, there were more than 80,000 I-94 admissions to the United States. The 2019 Yearbook of Immigration Statistics, DHS, Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2017 to 2019. available at: <https://www.dhs.gov/immigration-statistics/yearbook/2019/table25>

¹⁹⁵ Dep’t of Justice, Immigration & Naturalization Service, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689, 28,691 (Mar. 26, 1999).

- DHS should propose including the same protections – that disregarded the receipt of benefits by previously exempt immigrants when they later seek to adjust status – to returning LPRs that were included in the DHS 2019 Rule. These and other LPRs frequently have longer and deeper family and community ties to the U.S., factors that are treated as warranting the favorable exercise of discretion in many other immigration law contexts.¹⁹⁶

2. What aspects of the 1999 NPRM, if any, should be included in a future public charge inadmissibility rulemaking and why?

The 1999 NPRM did not penalize use of Medicaid, SNAP, housing assistance benefits, nor any of the benefits listed in Question 3 below. Such programs were understood to supplement rather than fully provide for the basic needs of low-income people. Any new proposed rule should also not penalize use of these benefits in order to ensure that the rule is clearly understood and implemented by adjudicators and to avoid continuing any chilling effect for benefits for which immigrants are eligible.

3. What aspects of the vacated 2019 Final Rule, if any, should be included in a future public charge inadmissibility rulemaking and why?

DHS should propose the most complete and up-to-date list of immigration categories and pathways to status that are exempt from a public charge determination or that are not required to satisfy the public charge inadmissibility standards.

The 2019 Rule began to do this work. The proposed rule should list all the categories of immigrants and immigration pathways that are exempt or otherwise excluded from the public charge ground of inadmissibility under existing laws and regulations, including those enacted after the 2019 Rule, such as Liberians under the National Defense Authorization Act of 2020.¹⁹⁷

- The proposed rule should also include language referring to all other categories of immigrants that are exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the INA, including after-enacted laws providing for such exemption, or to whom such inadmissibility ground does not apply, i.e., statuses provided for under the INA as well as administratively established statuses, as enumerated above. In addition, DHS should propose to:
 - List all exemptions enacted in laws passed after 1999 and all other immigration categories that are exempt from or otherwise protected from a public charge determination. This includes statuses that are granted without regard to inadmissibility such as withholding of removal or withholding of deportation, cancellation of removal and suspension of deportation under the Immigration and Nationality Act (INA), as well as administratively established statuses like Deferred Enforced Departure and deferred action. Also, the rule should explain that for some groups the exemption applies

¹⁹⁶ See U.S. Citizenship and Immigration Services, “Chapter 10 - Legal Analysis and Use of Discretion,” Updated April 27, 2021, available at: <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-10#:~:text=If%20there%20is%20no%20evidence,office>

¹⁹⁷ Sec. 7611 of the National Defense Authorization Act of 2020 (Public Law 116-29) December 20, 2109, 8 USC 1255. 57 See Trafficking Victims Protection Act of 2000 INA 101(a)(15)(T). section 107(b)(1), 22 U.S.C. 7105(b)(1).

regardless of their pathway to adjustment of status, and that for others the totality of circumstances factors that arose while in a protected status, including the receipt of benefits, will be disregarded regardless of the individual's pathway to adjustment of status, as the 2019 DHS Rule recognized for some groups.

- Maintain and update a list of all the groups who are exempt or protected against a public charge determination. DHS should propose issuing a guidance that can be updated and expanded when new laws or policies provide additional exempt or protected immigration categories.¹⁹⁸ Immigrants, immigration attorneys, and other service providers need to know exactly which categories, and pathways to status, are exempt from the test in order to weigh decisions about applying for status, and potentially enrolling in cash assistance for income maintenance. This is particularly important because some immigrants who are exempt from a public charge determination – such as refugees and asylees – may be eligible for cash assistance for income maintenance and be unable to work because of the effects of trauma. To limit the chilling effect of the rule, and to protect the rights of individuals who may receive benefits as humanitarian immigrants, it is important to list all the exempt or otherwise protected categories of immigrants, and to account for additional exemptions that may be adopted or created in the future.

DHS should also clarify the scope of protection from public charge inadmissibility when people apply for a status or seek to adjust to another status. The 1999 Field Guidance does not clarify that certain categories of immigrants – who are exempt from a public charge determination if seeking status through a humanitarian pathway – are similarly exempt if they seek status through another pathway to which public charge criteria apply, such as through a family based visa petition. The 2019 DHS Rule did so for a limited subset of such immigrants but imposed some unnecessary restrictions and also omitted other immigrant categories that should be considered statutorily protected from the consequences of a public charge determination regardless of adjustment of status pathway.¹⁹⁹

Consistent with the 2019 Rule, any new rule should also exclude state and local benefits for the reasons previously stated. Note that states may adopt different names for the same or similar publicly funded programs. In Illinois, for example, CHIP is called “All Kids” and an exclusively-state funded Medicaid-like program for immigrant seniors is called the “Health Benefit for Immigrant Seniors” program.

Consistent with the 2019 Rule, any new rule should also not penalize family members' use of benefits. Make clear that benefits used by an applicant's family members or sponsors do not count as factors in the applicant's public charge test. This is critical in minimizing the chilling effect of the public

¹⁹⁸ As noted earlier, this type of guidance would likely fall into the category of “interpretive rules” which are exempted from notice and public comment rulemaking under the Administrative Procedures Act (5 USC 553(b)).

¹⁹⁹ The 2019 DHS Rule listed four categories of these broadly exempted statuses. See 212.23(a)(18), (19), (20), and (21). These groups were: T visa grantees and applicants for T status with a prima facie case determination, U grantees and petitioners, VAWA self-petitioners, and certain battered “qualified” immigrants. The text of the provisions for the first two groups made explicit that the exemptions protected them regardless of the adjustment pathway taken, and the Preamble to the regulation clarified that this broader protection also applied to the other two groups. 84 Fed. Reg. 41341, note 238.

charge rule on access to benefits by people, including citizen children, who are not subject to a public charge determination but whose family members may seek LPR status in the future.

4. What data are available to estimate any potential direct and indirect effects, economic or otherwise, of the public charge ground of inadmissibility, the 1999 Interim Field Guidance, or the vacated 2019 Final Rule? For instance, what data are available to estimate any potential direct and indirect effects, economic or otherwise, on individuals, social service organizations, hospitals, businesses, and other persons and entities?

The 2019 Rule had a negative economic impact on states and localities as well as businesses, hospitals, community health centers, and non-profit organizations that serve immigrants. The chilling effect of the 2019 Rule has been well documented throughout this comment. These enrollment changes due to the chilling effect most likely led to decreased Medicaid participation for legal immigrant families.²⁰⁰ Nationwide, more than 19 million, or 1 in 4 (25 percent), children live in a family with an immigrant parent, and nearly 9 in 10 (86 percent) of these children are citizens.²⁰¹ The loss of access to federal public benefits most likely increased state and local costs.²⁰² For example, the loss of Medicaid benefits means individuals did not receive timely preventive care, timely treatment for Covid-19²⁰³, and likely sought medical assistance in emergency rooms, driving up uncompensated care costs and avoidable admissions.²⁰⁴ The loss of SNAP benefits will affect immigrant and citizen children who will come to school hungry. SNAP has been shown to improve test scores and readiness to learn and reduce behavioral problems for these children.²⁰⁵

The Migration Policy Institute (MPI) found that 47 percent of immigrants live in a family receiving the benefits included in the 2019 final public charge rule, compared to 3 percent of noncitizens using only

²⁰⁰ Zallman L, Finnegan KE, Himmelstein DU, Touw S, Woolhandler S. Implications of Changing Public Charge Immigration Rules for Children Who Need Medical Care. *JAMA Pediatr.* 2019;173(9):e191744. doi:10.1001/jamapediatrics.2019.1744

²⁰¹ Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage, KFF, Samantha Artiga, Rachel Garfield and Anthony Damico, Sep 18, 2019, available at: <https://www.kff.org/racial-equity-and-health-policy/issue-brief/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage/>

²⁰² Medicaid Payments at Risk for Hospitals Under Public Charge, Manatt Health, Cindy Mann, Allison Orris, 11.16.18, available at: <https://www.manatt.com/insights/white-papers/2018/medicaid-payments-at-risk-for-hospitals-under-publ>.

²⁰³ Some Immigrants Avoid New York Hospitals Because of the Public Charge Rule

USCIS says COVID-19 related treatment will not count towards public charge determinations, but fear persists, Documented, Amir Khafagy, MAY 21, 2020, available at: <https://documentedny.com/2020/05/21/some-immigrants-avoid-new-york-hospitals-because-of-the-public-charge-rule/>

²⁰⁴ Administration Should Reverse Anti-Immigrant Policies That Will Worsen Impacts of Health and Economic Crises, CBPP, MAY 6, 2020, SHELBY GONZALES, available at: <https://www.cbpp.org/research/immigration/administration-should-reverse-anti-immigrant-policies-that-will-worsen-impacts>. For just one account see this article from a social worker who works with immigrants: *The public charge rule isn't just bad for immigrants. It's bad for public health.* News & Commentary, Jonnelle Rodriguez, Mar 19, 2020, <https://www.afsc.org/blogs/news-and-commentary/public-charge-rule-isnt-just-bad-immigrants-its-bad-public-health>.

²⁰⁵ Administration Should Reverse Anti-Immigrant Policies That Will Worsen Impacts of Health and Economic Crises, CBPP, MAY 6, 2020, SHELBY GONZALES, <https://www.cbpp.org/research/immigration/administration-should-reverse-anti-immigrant-policies-that-will-worsen-impacts>.

TANF or SSI under the 1999 public charge rule.²⁰⁶ MPI’s research also found that confusion around receipt of public benefits leads immigrants to forego benefits for which they are eligible, the so-called “chilling effect.” A 2018 study conducted by the Urban institute found that approximately 1 in 7 or 13.7 percent of adults in immigrant families reported they did not participate in a benefit program for fear of risking future green card status.²⁰⁷

Cook County Health (CCH) estimated the negative economic impact of the 2019 Rule.²⁰⁸ CCH is the largest provider of charity care to uninsured and underinsured individuals in Illinois. CCH stated that it “is uniquely positioned to understand how this rule will harm our patients, their families, and our mission to provide care to all Cook County residents. If the rule goes into effect, many of our patients will be less likely to be insured and sicker when they come to us for care.” An analysis by the Geiger Gibson/RCHN Community Health Foundation Research Collaborative concludes that as a result of declining Medicaid revenue from the 2019 public charge rule, health centers across the nation could serve between 136,000 and 407,000 *fewer* patients annually.²⁰⁹ Patients may simply cease to obtain care they need, insured or otherwise, since having a medical condition that requires care can jeopardize the ability to remain in the United States. Immigrants simply may forgo care for themselves and their families entirely, fearing the consequences.²¹⁰ Indeed, this is exactly what happened: medical providers practicing across the U.S. saw firsthand the negative impact of the 2019 public charge rule as their immigrant patients stated that they were too scared to seek timely medical care or to enroll in public programs they were eligible for due to fear of negative immigration consequences.²¹¹ For example, according to a statewide health access

²⁰⁶ Millions Will Feel Chilling Effects of U.S. Public-Charge Rule That Is Also Likely to Reshape Legal Immigration, Migration Policy Institute, Jeanne Batalova, Michael Fix and Mark Greenberg, (August 2019), <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>

²⁰⁷ One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018, Urban Institute, Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman May 2019, https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf. See also, Administration Should Reverse Anti-Immigrant Policies That Will Worsen Impacts of Health and Economic Crises, CBPP, MAY 6, 2020, SHELBY GONZALES, <https://www.cbpp.org/research/immigration/administration-should-reverse-anti-immigrant-policies-that-will-worsen-impacts>.

²⁰⁸ Public Charge Rule Change, Cook County Health, available at: https://cookcountyhealth.org/wp-content/uploads/Public-Charge_010819-002.pdf (last viewed October 21, 2021).

²⁰⁹ How will the Public Charge Rule Affect Community Health Centers and the Communities They Serve? (Updated Estimates), Peter Shin, Jessica Sharac, Sara Rosenbaum, and Maria Velasquez, available at: <http://gwhpmmatters.com/blog-how-will-public-charge-rule-affect-community-health-centers-and-communities-they-serve-updated>.

²¹⁰ *Id.*

²¹¹ Nwadiuko J, German J, Chapla K, et al. Changes in Health Care Use Among Undocumented Patients, 2014–2018. *JAMA Netw Open*. 2021;4(3):e210763. doi:10.1001/jamanetworkopen.2021.0763. Legal Counsel: A Health Care Partner For Immigrant Communities, Health Affairs, Rebecca Gale, AUGUST 2021, available at: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.00920>. Haq, C., Hostetter, I., Zavala, L., & Mayorga, J. (2020). Immigrant Health and Changes to the Public-Charge Rule: Family Physicians' Response. *Annals of family medicine*, 18(5), 458–460. <https://doi.org/10.1370/afm.2572>; Wang, R.Y., Rojo, M.C., Crosby, S.S. et al. Examining the Impact of Restrictive Federal Immigration Policies on Healthcare Access: Perspectives from Immigrant Patients across an Urban Safety-Net Hospital. *J Immigrant Minority Health* (2021). <https://doi.org/10.1007/s10903-021-01177-9>. “Public Benefit Use and Social Needs in Hospitalized Children with Undocumented Parents,” (Masciale M, et al. *Pediatrics*. June 10, 2021, <https://doi.org/10.1542/peds.2020-021113>). Illinois doctors say Trump

survey conducted by The Washington Immigrant Solidarity Network (WAISN), the public charge rule was cited as a reason the respondent or a family member did not seek care for a serious medical condition (15%), access needed health care services (12%), engage with a primary care provider (10%) and have health insurance (7%).²¹²

The New American Economy (NAE) Research Fund estimated the negative economic impact of the 2019 Rule. NAE's analysis reveals that the public charge rule primarily affected immigrants who are working, often in key industries, many of whom have at least some college education and that . collectively, these immigrants touched pay billions of dollars in taxes to the American federal, state, and local governments each year.²¹³ Some of the findings of the NEA analysis include:

- The total annual income of workers affected by the public charge rule is more than \$53.6 billion. Should they leave the United States, our economy would suffer an indirect economic loss of more than \$37.4 billion. The total cost to the U.S. economy could therefore amount to more than \$91.0 billion.
- By encouraging or forcing workers to leave or go underground, the rule change will have a destabilizing effect for several major industries in particular, including:
 - Hospitality and food services, where 2.3 percent of all workers (more than 271,000 people) are affected.
 - Personal and general services, where 2.2 percent of all workers (more than 182,000) are affected.
 - Construction, where 1.9 percent of all workers (almost 218,000 people) are affected.
 - Manufacturing, where 1.6 percent of all workers (more than 264,000 people) are affected.
 - Professional and business services, where 1.5 percent of all workers (almost 297,000 people) are affected.
 - Natural resource and mining industries, where 3.6 percent of all workers (more than 122,000 people) are affected.
- Almost 255,000 immigrant entrepreneurs are affected by the rule change, hurting businesses across the country and limiting employment opportunities for American workers.²¹⁴

At the Shriver Center and Legal Council, staff members have dedicated thousands of hours to the topic of “public charge”, since the Spring of 2018 when a draft of the Trump Administration’s public charge rule changes were first leaked to the press. These hours have been dedicated towards research, creating and conducting trainings on public charge to combat the chilling effect and misinformation about the public charge rule. Shriver Center and Legal Council staff have spent hundreds of hours in meetings with organizations who work with immigrants and our local public benefits agencies to provide accurate

immigration proposal already scaring away patients, LISA SCHENCKER, CHICAGO TRIBUNE, DEC 02, 2018, <https://www.chicagotribune.com/business/ct-biz-immigration-proposal-scaring-people-from-medicaid-1202-story.html>.

²¹² 2020 Washington State Health Equity for Immigrants, https://static1.squarespace.com/static/5c9a7904f8135a221909597f/t/601336048bbfc383fa0fdbf/1611871749735/Health+Equity+for+Immigrants+Report+2020_Highlights.pdf.

²¹³ The New “Public Charge” Rule and Its Negative Impact on the U.S. Economy, New American Economy, October 14, 2019 and Updated on February 2, 2021, available at:

<https://research.newamericaneconomy.org/report/economic-impact-of-public-charge-rule/>

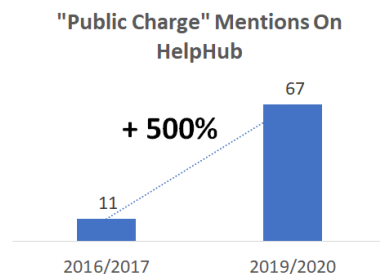
²¹⁴ *Id.*

information about the public charge assessment (as described in the NPRM and the 2019 Rule) and to prepare for implementation of the final rule. Immigrants subject to the 2019 Rule and who sought to apply for their green card when this rule was in effect, needed to complete the I-944 Self-Sufficiency form. Shriver Center and Legal Council staff spent multiple meetings with public benefits' agency staff members as well as other partners to understand the extensive requirements of the I-944 form and the type of requests the public benefits agencies would receive from noncitizens and/or their representatives to provide accurate information for successful completion of the form. The scope and level of detail required in those questions--such as type, amount, and dates of benefits ever applied for or received---required us meeting multiple times over a period of over a year with internal and external partners to provide accurate input to create this form.

The Shriver Center and Legal Council expended resources in helping found the Protecting Immigrant Families-Illinois (PIF-IL) coalition with Legal Council for Health Justice, Illinois Coalition for Immigrant and Refugee Rights and the Latino Policy Forum. The PIF-IL coalition was formed specifically from the need to provide accurate information about the Trump Administration's public charge rule changes to immigrants and staff working with immigrant-serving organizations. PIF-IL created a website, fact sheets on public charge, conducted hundreds of public charge trainings in multiple languages, and held public awareness events.

The Shriver Center and Legal Council, along with other partners, operates HelpHub, Illinois' only training and technical assistance center for frontline health and social service providers with over 3,300 members. Through HelpHub, the Shriver Center and Legal Council, along with other health policy organizations provide training and technical assistance to over 300 professionals each month and use HelpHub to identify and address systemic barriers to healthcare access. Comparing the two years (2016/2017) before the Spring of 2018 when changes to the public charge rule were leaked to the press and the two years after that date (2019/2020), there was a 500% increase in frontline immigration social service and health service providers requesting advocates' expertise on the topic of public charge, evidencing an unprecedented demand for information and assistance for their immigrant clients.

TABLE 1



Conclusion

We urge the repeal of the public charge statutory provision as the most just outcome for immigrant families, and for all of us. Short of that, DHS must at a minimum apply the provision narrowly and uniformly, to comport with civil rights laws and antidiscrimination principles. We urge a definition

that fits within the existing statutory scheme after PRWORA and IIRIRA, where actual or speculative future public benefits use is not relevant, and where a sufficient affidavit of support will satisfy the public charge inquiry, without more. As detailed above and as the aftermath of the 2019 Rule made clear, any other approach impedes public health and harms us all.

Thank you for the opportunity to submit comments. Please contact us if you have any questions about or need any further information on these comments.

Sincerely,

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