



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

Submitted via www.regulations.gov

RE: USCIS-2021-004; Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

We are writing on behalf of the Protecting Immigrant Families Michigan Campaign in response to the Department of Homeland Security's (DHS) Request for Public Input: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services.

The Protecting Immigrant Families Michigan Campaign is part of a national network anchored by the National Immigration Law Center (NILC), the Center for Law and Social Policy (CLASP), and a steering committee of 15 other member organizations. The "Protecting Immigrant Families, Advancing Our Future" (PIF) Campaign is made up of hundreds of diverse organizations across the country. Our mission is to unite to advance, protect and defend access to health care, nutrition programs, public services and economic support for immigrants and their families at the local, state and federal level. The PIF Michigan Campaign consists of the Michigan Immigrant Rights Center, The Michigan League for Public Policy, Detroit Hispanic Development Corporation, Voces, African Bureau of Immigration & Social Affairs, and the Arab Community Center for Economic and Social Services. All of our member organizations either directly serve immigrant communities in the state of Michigan, or engage in policy and advocacy work on behalf of those communities.

We commend USCIS for removing the 2019 public charge rule from the Code of Federal Regulations and restoring the 1999 Field Guidance -- however, there is more work to do to end the policy's lasting harm. We are writing to share information about the enduring effects of the Trump-era public charge policies. Due to this lasting harm, we strongly encourage USCIS to take three main steps to fix it:

1. **Engage in an outreach and public education campaign.** Such a campaign would send a strong signal to noncitizens and their families that they can apply for immigration benefits even if a family member needs to rely on health care, nutrition, housing, or other assistance.
2. **Begin the process of rulemaking.** A new rule would be based on the 1999 Field Guidance now in effect but update it in three key ways. It would 1) clarify key definitions and time periods in the totality of circumstances test; 2) articulate a finite list of benefits included as factors in a public charge determination; and 3) provide a

comprehensive, updated list of the immigration groups exempt from public charge inadmissibility. We believe that rulemaking will solidify the progress already achieved through the reinstatement of the 1999 Field Guidance and allow for important modifications that modernize and clarify this policy.

3. **Propose changes to a key USCIS form.** DHS should change the Application to Register Permanent Residence or Adjust Status (Form I-485) and its instructions to focus only on the programs that are relevant in a public charge determination.

I. Outreach and Community Education

In light of the pandemic and immigrant communities' concerns that accessing health care or nutrition benefits will prevent them from obtaining a green card or becoming a citizen, there is no time to waste. We have seen that public charge concerns have remained a concern among the communities we work with, regardless of the fact that the Trump-era policy is no longer in effect. This is not surprising considering the rule went in and out of effect multiple times, had multiple effective dates, and has now been in the news for years. The communities we serve need reassurance from the government that the Trump-era policy is gone for good, and that use of public benefits will not affect their future immigration prospects.

Six out of the seven member organizations of the Protecting Immigrant Families Michigan Campaign provide direct services to immigrants across the state of Michigan. Our organizations have seen numerous examples of how the Trump-era public charge policy continues to impact the communities we work with, as the fear and confusion have not abated with the change in administration.

For example, the Michigan Immigrant Rights Center ("MIRC") provides full representation to immigrants across the state of Michigan for their immigration cases, and also maintains a free, confidential intake line that any immigrant in the state can call to receive, at minimum, brief advice and appropriate referrals. MIRC still receives phone calls to the intake line, and inquiries from existing clients, regarding public charge issues. Throughout the COVID-19 pandemic, we have heard from clients who were concerned that the stimulus payments, Pandemic EBT, Emergency Services Only Medicaid, or unemployment benefits would create public charge issues.

Another one of our partner organizations, VOCES, spent the last three weeks in May 2021 passing out a one-page informational flyer regarding public charge to about 50 community members. VOCES reports that about 75% of the individuals they passed out the flyers to were not aware that the Trump-era public charge rule has been permanently enjoined.

The ability for DHS, USCIS and other federal agencies to move beyond the COVID-19 pandemic and into economic recovery may be limited if immigrants and their family members are afraid to rely on health care and other services designed to get the country back on track because of immigration consequences. Many of the clients our campaign serves are essential workers who need to be able to access a free COVID-19 vaccine or emergency care without fear that those services will implicate their immigration status. Additionally, many of our clients are

primary or sole caretakers of US citizen children who will face lasting consequences if unnecessarily deprived of public benefits designed to protect them.

We recommend that:

- DHS issue a FAQ that multiple federal, state and local agencies can use to answer common questions about the 1999 Field Guidance.¹
- USCIS and other federal agencies conduct large-scale outreach and public education to help reverse the chilling effects and other harm of the Trump-era regulations.

Below are some recommended messages for USCIS to communicate in engaging in outreach with affected communities, as well as communications channels that we recommend USCIS employ.

Sample Messages:

- The Biden Administration has permanently ended the Trump public charge policy.
- COVID testing, vaccination, and care won't affect your immigration status or any immigration status you may apply for in the future, including applications for U.S. citizenship
- Getting help with health care (except for long-term care in a nursing home), food, or housing also won't affect your immigration status or applications.
- Healthcare and food programs serving your children or other members of your household won't affect your immigration status or applications.
- Only use of on-going cash assistance programs that are intended to pay your daily living expenses, such as Supplemental Security Income and Temporary Assistance for Needy Families, and long-term institutional care at government expense are considered in the public charge test.
- Many categories of immigrants are exempt from public charge.

Communications Channels to Leverage

- We would recommend training USCIS line-level customer service staff to be able to provide basic information about public charge and public benefits to those who call or email USCIS customer service;
- USCIS offices should maintain flyers, brochures and notices regarding public charge, available in multiple languages including Spanish, Arabic, and French, and should have a mechanism to allow community organizations to order bulk copies of these informational materials to distribute to their networks;
- The USCIS website should have information regarding public charge and the above-suggested messaging written in an accessible format, and available in multiple languages.

¹ The Center on Budget and Policy Priorities, the Center for Law and Social Policy, and the National Immigration Law Center have shared some questions received about the 1999 Field Guidance and draft responses with USCIS staff.

The USCIS website's current page regarding public charge² is largely indecipherable to non-attorneys.

- USCIS should engage with state and local governments to ensure their public benefits agencies are informed regarding public charge and are providing appropriate messaging to their constituents regarding public charge

II. Rulemaking

Although DHS's 2019 public charge rule is no longer in effect, and work to regain the trust of immigrants and their families is proceeding, we strongly urge the Biden Administration to work quickly to promulgate a new public charge rule which communicates clearly that an applicant's or family members' participation in health care, nutrition, housing and many other programs will not affect their ability to adjust their status or to become citizens.

The new rule would be based on the 1999 Field Guidance but update it in three key ways. It would 1) clarify key definitions and time periods in the totality of circumstances test; 2) articulate a finite list of benefits included as factors in a public charge determination; and 3) compile and update the immigrant groups exempt from a public charge definition. We believe that rulemaking will solidify the progress already achieved and allow for important modifications that modernize and clarify this policy.

Rulemaking is important for a number of reasons. The reasons include: addressing the "chilling effect" of the 2019 Public Charge Rule on public benefits use as well as applications for adjustment of status and citizenship; promoting an equitable and efficient implementation of USCIS policy, rebuilding trust with key stakeholders; and making it more difficult for a future administration to reverse the policy. We need to be able to advise our clients with complete certainty that the Trump-era policy is gone for good, and so long as the current policy is not formalized in regulation, it is difficult for our organizations to provide this level of reassurance to the communities we serve.

Recommendation #1 – Clarify key definitions and time periods that are part of the totality of circumstances test.

- Clarify definitions such as "primarily dependent" and "subsistence" so that a new administration can't issue guidance that improperly broadens the definitions.
- Set time periods for the forward and backward looking components of the totality of the circumstances test.

² <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

Recommendation #2 – USCIS should provide a clear list of benefits that count as factors in a public charge determination and publish and update guidance that provides examples of the public benefits that do not count as factors.

- Codify in regulations a clear and finite list of benefits included as factors in a public charge determination consisting of only: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and institutional long-term care paid for by Medicaid.
- Propose that cash assistance and institutional long term care benefits exclusively funded by states and localities should be excluded.
- Issue guidance referenced in the rule that provides a non-exclusive list of *cash and non-cash benefits* that do not count as cash assistance for income maintenance in the preamble to a rule and a separate guidance document that can be easily updated.

Recommendation #3 – Update the immigrant groups exempt from and protected against a public charge determination.

The Protecting Immigrant Families Michigan Campaign has been engaged in community outreach and education regarding the Trump-era rule for over two years. What our Campaign has consistently seen is that the vast majority of individuals who shared public charge concerns were already Lawful Permanent Residents, held a humanitarian status that would not be subject to a future public charge test, or did not have an avenue for a green card in the foreseeable future. In other words, the vast majority of folks that our Campaign advised regarding public charge never had to worry about the public charge test in the first place. This demonstrates a huge failure in USCIS' messaging, and should be rectified by clearly identifying and codifying the categories of immigrants who are exempt from public charge. We recommend that USCIS, through rulemaking:

- Clearly identify in one section all of the categories of immigrants to whom the public charge grounds of inadmissibility do not apply
- Provide enduring protection from public charge inadmissibility when exempt individuals seek to adjust status through a non-exempt pathway like a family-based petition. DHS should clarify that individuals who are not subject to public charge when they apply for a status are also exempt from the public charge ground of inadmissibility when they seek to adjust their status or are adjudicated for another status that is not exempt.
- Clarify that the public charge ground of inadmissibility does not apply to visa holders or nonimmigrants extending or changing their status.
- Clarify the circumstances under which returning LPRs may be deemed inadmissible as likely public charges as a result of their lawful conduct prior to departure.

III. Form Changes

DHS should change the Application to Register Permanent Residence or Adjust Status (I-485) and its instructions to focus only on the programs that are relevant in a public charge determination and change the heading to indicate the question is about public charge.

- The Current Application to Register Permanent Residence or Adjust Status (I-485) is used for people applying for lawful permanent resident status in the U.S. It includes two questions about "public assistance." Question 61 and 62 ask: "Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment?)" and "Are you likely to receive public assistance in the future in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment)."
 - Our Campaign's organizations work with many clients who are completely exempt from a public charge test, such as VAWA self-petitioners, U and T visa petitioners, refugees and asylees. This overly-broad question creates unnecessary anxiety to exempt applicants, and also generates unnecessary paperwork and review for both the applicant and the adjudicating USCIS officer.
 - USCIS should revise the form to ask only about the specific programs that are relevant to a public charge determination--cash assistance for income maintenance and institutional long term care at government expense – and provide clear definitions in the form instructions.
 - USCIS should further change the heading from “public assistance” to “public charge” to signal the questions’ limited purpose to applicants and immigration lawyers.
 - Clarity on precisely which benefits must be reported, and why will help to reduce the administrative burden for USCIS, applicants and benefit granting agencies, as well as avoid confusion and minimize the chilling effect.

Conclusion

In conclusion, the Protecting Immigrant Families Michigan Campaign recommends that DHS immediately take the following three actions to reverse the harm of the Trump-era public charge regulations: (1) engage in an outreach and public education campaign; (2) issue regulations to build on the 1999 Field Guidance; and (3) propose changes to a key USCIS form.

We request that our comment and all resources cited within it be considered part of the formal administrative record. Thank you for the opportunity to submit comments. Please do not hesitate to contact our campaign at (734) 239-6863 if you have any questions or need any further information.

Sincerely,



05/19/2021

Marie Nelson
Staff Attorney
Michigan Immigrant Rights Center

On behalf of:

**Protecting Immigrant Families Michigan
Campaign**

Michigan Immigrant Rights Center
Detroit Hispanic Development Corporation
African Bureau of Immigration & Social Affairs
Michigan League for Public Policy
Voces
Arab Community Center for Economic & Social
Services