

October 22, 2021

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

Submitted via www.regulations.gov

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

The 85 undersigned organizations dedicated to the health and well-being of children are writing in response to the Department of Homeland Security's (DHS) advance notice of proposed rulemaking (ANPRM) on public charge published on August 23, 2021. We are grateful to the administration for taking the first step in rectifying the harm to children in immigrant families created by the previous public charge rule.

Approximately [26% of children in the U.S. or 17.8 million children](#) under the age of 18, live with at least one immigrant parent. The vast majority of these children (more than 88 percent) are U.S.-born citizens, and the rest are immigrants themselves, including those who are lawful permanent residents and undocumented. Children of immigrants are one of the fastest growing segments of the U.S. child population, and therefore their healthy development is critical for the nation's future prosperity.

Even prior to being finalized, the 2018 public charge proposed rule created a significant chilling effect for immigrant families with a direct impact on millions of children. Many families misunderstood how the new regulation affected them, including confusion about which programs were included in the new rule and whether a child's or other family member's use of benefits would have public charge consequences. Combined with a series of other anti-immigrant policies, families became [increasingly afraid](#) to access basic needs, such as health care and nutrition assistance, for even their U.S. citizen children. A national study [found](#) that of adults in immigrant families surveyed in December 2019, approximately 48 percent avoided SNAP, 45 percent avoided Medicaid and the Children's Health Insurance Program (CHIP), and 35 percent avoided housing subsidies for fear of risking green card status. Many immigrant parents also became fearful and [reluctant](#) to bring their children to school or child care. Even despite additional hardship brought on by the COVID pandemic, [research shows](#) that 1 in 4 adults in immigrant families reported they or a family member avoided non-cash benefits or other assistance to meet their basic needs because of public charge or other immigration concerns. Even now that DHS has withdrawn the 2019 final rule, we continue to hear that concerns about

immigration consequences frequently prevent immigrant parents from accessing benefits for their children.

These alarming trends have significant implications for the long-term health and well-being of children in immigrant families, threatening our nation's future prosperity and ability to recover from the pandemic. It is important that the federal government commits to meaningfully expanding access to public benefit programs rather than creating barriers to those who need assistance, especially children. The [disenrollment](#) of immigrant families from programs like SNAP and Medicaid hinders children's development and contributes to child poverty and food insecurity. Access to [SNAP](#), [health insurance](#), and other benefits are essential for children as they lead to better health that translates to improved outcomes in academic success and long-term economic security that benefit society as a whole.

For these reasons, it is critical that DHS move forward quickly with a more fair and equitable rule that minimizes the harm to children in immigrant families and recognizes the unique needs of children, including the long-term benefits of connecting them to healthcare and other assistance.

We agree with the recommendations made in the [Protecting Immigrant Families \(PIF\) sign-on comment](#), and we also propose the following key recommendations as they relate to children:

1. DHS should adopt a new definition of public charge;
2. DHS should apply child-specific considerations in public charge determinations for applicants with children; and
3. DHS should apply child-specific considerations for children applying for admission or adjustment of status.

DHS should adopt a new definition of public charge.

DHS should define someone likely to become a public charge for inadmissibility purposes as a person who is “likely to become primarily and permanently reliant on the federal government to avoid destitution.” By focusing on primary and permanent reliance on the government, this definition is consistent with the congressional intent and historical understanding of public charge as applying to a narrow set of immigrants living in almshouses, rather than a broader group of immigrants who may receive modest public benefits to supplement their employment income and support their families.

When considering past benefit use to predict future reliance on government programs, DHS should limit the benefits considered and the lookback period. These limitations will make it easier for both applicants and adjudicators to make decisions and result in more consistent public charge outcomes. The only benefits that should be

considered are Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF), and only if used in the most recent two or three years. We also strongly recommend that any benefit used by a child should not be considered when making a public determination.

Importantly, even if an applicant has used SSI or TANF in the past two or three years, such benefit use should not be dispositive. Adjudicators should still consider the totality of the circumstances and determine whether there is evidence to overcome the recent benefit use. For example, a family may use TANF temporarily while the parent is attending school or a training program that, once complete, would lead to higher and more stable income. Children are inherently dependent on their parents for support, and ensuring that parents are able to enroll their families in the benefit programs for which they are eligible is an important societal goal. These programs were 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 goals. Therefore, it is important that immigrant families are able to access benefit programs without fear of immigration consequences.

It should also be clear which benefit programs will not be considered in making a public charge determination. We agree with the description of programs that should be excluded from a public charge determination that is provided in more detail in the [PIF letter](#), including: all types of Medicaid benefits; use of benefits by an applicant's family members; programs funded completely by state, local, tribal, and territorial governments; and emergency and disaster relief benefits.

Finally, an affidavit of support should create a strong presumption that the applicant is not a public charge. This is consistent with the USCIS adjudicator's field manual under the 1999 field guidance, the current Foreign Affairs Manual instructions, and legislative history. An immigrant who has a sponsor who has committed to providing financial support if needed can be safely assumed to not be likely "to become primarily and permanently reliant on the federal government to avoid destitution." A legally valid affidavit of support can therefore overcome any other factor that may indicate a person is likely to become a public charge in the future.

DHS should apply child-specific considerations in public charge determinations for applicants with children.

- a. **DHS should exclude children's use of benefits when making a public charge determination for that child's family member.**

DHS should make clear in its regulatory proposal that benefits used by an applicant's family members or sponsors, particularly use of benefits by an applicant's children, do not count as factors in the applicant's public charge test. DHS has committed to propose a rule that does not cause undue fear and confusion among immigrant communities or present other obstacles to immigrants and their families accessing public benefits available to them, particularly in light of the COVID-19 pandemic and the resulting long-term public health and economic impacts. Therefore, DHS must consider evidence regarding the chilling effect of the final 2019 rule, and make clear that use of benefits by family members, including U.S. citizen children, will not be considered in a public charge determination for those who are seeking LPR status.

Despite the fact that the final 2019 rule only applied to a [small percentage](#) of noncitizens, many immigrants and their U.S. citizen family members, including children, chose to forgo critical benefits for which they were eligible. Uninsured rates among Hispanic children [increased](#) for the first time in a decade in 2017, as parents were afraid to access health care for their children. In a [2019 survey](#) showing significant declines in use of benefits due to public charge concerns, it is notable that approximately 25 percent of those surveyed in the study reported avoiding programs that were not included in the public charge rule, including the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC) and free or reduced price school lunches.

Although DHS's 2019 public charge rule is no longer in effect, the chilling effect of the rule continues to have devastating impacts on children's use of public benefits, and therefore on their healthy development. To reduce the chilling effect and make it clear to families that their children can continue to use benefits without fear of immigration consequences, DHS should explicitly state that a child's use of any benefit--including a child's use of TANF and SSI (for reasons explained below)--will not be considered when making a public charge determination for that child's family member.

b. DHS should explicitly state which benefits are not included for the public charge determination.

First, DHS must make clear that an applicant's use of benefits other than TANF and SSI will not be considered in a public charge determination. As mentioned earlier, immigrant parents also withdrew from benefits that were not included in the rule for fear of immigration consequences. 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](#), and therefore the whole family is at risk of untreated illness, lost workdays, unpaid bills, and medical bankruptcy. In contrast, when parents are able to access benefits, their [children are also more likely to benefit as well](#). [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.

Second, DHS should clarify that state or local government funded programs—even if they provide cash assistance— should not be counted as factors in a public charge test. Limiting the benefits that count to two federal benefits will be easier for adjudicators to administer and for providers to explain to immigrants, reducing confusion. States and localities have a compelling interest in promoting the health and safety of children in their communities, and that includes providing benefits at their own expense without barriers caused by federal policies.

DHS should exclude the use of benefits during a public emergency. The harms of including such benefits were made clear during the COVID-19 pandemic. Though USCIS [stated](#) that COVID-19 testing, treatment, and vaccines would not be used against immigrants in a public charge determination early in the pandemic, surveys by [state-based](#) and [national](#) organizations found that immigrant families did not access medical treatment for COVID-19, even when sick, because they were concerned about immigration consequences and similarly families avoided pandemic-specific programs despite reporting that cash, food, and employment were the most pressing needs during the pandemic. Benefits used during natural disasters or other extraordinary circumstances, such as the COVID-19 pandemic or in the aftermath of hurricanes and wildfires, are due entirely to external events and do not provide any information on the recipient’s likelihood of becoming primarily reliant on government assistance at a future date.

DHS should apply child-specific considerations for children applying for admission or adjustment of status.

- a. DHS should apply a child-centered framework for the statutory public charge factors.**

Children are not expected to be able to support themselves and therefore the statutory public charge factors should be applied differently to children as follows:

- Age: 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. 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.
- Family status: Having family support should be applied favorably to children, who are inherently dependent on their parents and caregivers for their support.
- Health: Health should not be a factor in a child’s public charge determination. Because of their young age, most children are healthy, and 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.

- Affidavit of support: In cases where a child has an affidavit of support, that should be sufficient to establish a presumption that the child is not a public charge.

b. DHS should specify that any use of benefits as a child will not be considered in a public charge determination.

DHS should propose that all benefits received by children, including use of TANF, SSI, and Medicaid for long-term care, which are currently included in the 1999 field guidance, be excluded from consideration in their public charge determination. Child development research shows that while barriers to public benefits undermine child well-being and their future earnings as adults, [that kids are healthier](#) and [earn more as adults](#) when they benefit from resources at an early age. Children's access to TANF, SSI and Medicaid for institutional long-term care are not predictive of likelihood to be a future public charge, and in fact result in gains for children and our economy.

The TANF program is one of the only federal programs that provides cash assistance to families with very low incomes. The majority of TANF recipients – [72%](#) – are children, and [in 2020 the program lifted over 200,000 children above the federal poverty line](#). A 2019 [landmark study from the National Academy of Sciences](#) confirmed that cash assistance like TANF reduces child poverty and improves children's long-term health and educational and economic outcomes. Cash assistance has a two-generation effect in promoting economic mobility: in addition to supporting children, the assistance helps adults in the household afford child care, transportation to work, higher education, or job training programs that lead to steady employment and higher-paying jobs. Thus, a child's use of TANF actually leads to greater economic stability for children and cannot accurately predict whether or not a child would be a public charge.

The SSI program pays benefits to adults and children with disabilities who have limited income and resources. [The goal of SSI is to offset the financial burden associated with disabilities for families](#), and due to SSI benefits [over 350,000 fewer children experienced poverty in 2020](#). SSI enhances the opportunity for a child with disabilities to achieve an independent and rewarding life. Importantly, receiving SSI as a child does not mean that the individual will always need assistance; for example, many children receive SSI as infants due to low birthweight but stop receiving it once they have caught up with their developmental milestones. [Over half](#) of SSI child recipients are found not to qualify for SSI when they turn 18 and are evaluated using the adult standards for eligibility. Thus, a child's use of SSI should not be considered in a public charge determination, and penalizing children with disabilities discriminates against them.

While Medicaid also supports some children with special health needs, only a very small number of immigrant children access institutionalized long-term care. The minimal costs associated with this care are dwarfed by the harms created by the chilling effect and confusion created by having a Medicaid public charge policy, leading to children losing out on healthcare that is critical for their healthy development. Similarly to SSI, not all children who receive long-term care may require it into adulthood, and considering its use would discriminate against children with disabilities.

Ultimately, programs that provide healthcare, nutrition, housing, income support, and other assistance to families can break the cycle of generational poverty and increase economic productivity. Additionally, low investment in children and families [leads to child poverty and is costly to our government](#). Therefore, DHS should definitively exclude all benefit use for child applicants when making a public charge determination.

c. In the alternative, if DHS considers benefit use for child applicants, it should adopt the same policy outlined for adults above.

We urge DHS to exclude all benefit use in the public charge determination for child applicants. In the alternative DHS should adopt the same framework on benefit use for child applicants that we recommend for adults above. Specifically, DHS should limit its consideration of benefit use to TANF and SSI for the two- to three-year lookback period, look at the totality of a child applicant's circumstances, exclude use of state and local benefits from consideration, and exclude use of benefits during a public emergency from consideration.

Conclusion

We thank you for the opportunity to weigh in on this important policy and urge DHS to move quickly to advance a new rule that will mitigate the chilling effect created by the previous public charge rule and ultimately promote the health and well-being of children in immigrant families.

Signed,

National Organizations

AASA, The School Superintendents Association
AIDS Alliance for Women, Infants, Children, Youth & Families
Alliance for Early Success
American Academy of Pediatrics
American Federation of Teachers (AFT)
Association of Children's Residential & Community Services (ACRC)
Center for Law and Social Policy
Child Care Aware of America
Children's Defense Fund

Children's HealthWatch
Church World Service
Educare Learning Network
Families USA
Family Voices
First Five Years Fund
First Focus on Children
Forum for Youth Investment
Georgetown University Center for Children and Families
Institute For Child Success
Institute for Women's Policy Research
Kids in Need of Defense (KIND)
MomsRising
National Association for Children's Behavioral Health
National Association for the Education of Young Children
National Center for Children in Poverty
National Education Association
National Head Start Association
National Immigrant Justice Center
Partnership for America's Children
PolicyLab, Children's Hospital of Philadelphia
Prevention Institute
Save the Children
Start Early
The National Alliance to Advance Adolescent Health
UnidosUS
United Parent Leaders Action Network (UPLAN)
Young Center for Immigrant Children's Rights
ZERO TO THREE

State and Local Organizations

Abrazar, Inc. (CA)
Advocates for Children of New Jersey
Arkansas Advocates for Children and Families
California American Academy of Pediatrics Chapter 2
California Association of Food Banks
California Immigrant Policy Center
California WIC Association
Californians Together
Child Care Services Association (NC)
CHILDREN AT RISK (TX)

Children's Action Alliance (AZ)
Children's Advocacy Alliance (NV)
Children's Institute (OR)
Citizens' Committee for Children of New York
Coalition of Orange County Community Health Centers (CA)
Colorado Children's Campaign
Common Good Iowa
Community Action Marin (CA)
Connecticut Association for Human Services
Connecticut Voices for Children
Disability Voices United (CA)
Florida Health Justice Project
Florida's Children First
Hawaii Children's Action Network
Kansas Action for Children
Kids Forward (WI)
Kingsley House (LA)
Let's Grow Kids (VT)
Los Angeles County Office of Education (CA)
Louisiana Budget Project
Michigan Council for Maternal and Child Health
Michigan's Children
Mississippi Center for Justice
NC Child
New Mexico Voices for Children
Northeast Valley Health Corporation (CA)
Our Children Oregon
Pennsylvania Partnerships for Children
Prevent Blindness (IL)
Rhode Island KIDS COUNT
South Bay People Power (CA)
South Carolina Chapter of the American Academy of Pediatrics
The Children's Partnership (CA)
United Ways of California
Voices for Georgia's Children
Voices for Utah Children
Voices for Vermont's Children