



April 25, 2022

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

The Honorable Ur Mendoza Jaddou  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, D.C. 20529

Dear Secretary Mayorkas and Director Jaddou,

We write to comment on the Department of Homeland Security's (DHS's) Notice of Proposed Rulemaking (NPRM) on implementing Section 212(a)(4) of the Immigration and Nationality Act, published on February 24, 2022. As Members of the United States Senate, we applaud the important steps this proposal takes to update the "public charge" law and urge you to make further commonsense changes to ensure fairness and simplify its application.

The proposed regulation restores and improves upon the public charge field guidance that was issued by the Immigration and Naturalization Service in 1999. This guidance was the first attempt to define public charge and provide standards for determining inadmissibility on such grounds, standards which remained in place for nearly 20 years. Consistent with the Immigration and Naturalization Act, case law, and agency practice, the guidance helped ensure that immigrant families, including many with U.S. citizen children, were not deterred from accessing critical resources.

In 2019, the Department of Homeland Security under the Trump Administration proposed a new definition and implementation of the public charge rule, which was used to advance an anti-immigrant agenda and intimidate immigrant communities. While the 2019 public charge regulation took effect just as the COVID-19 pandemic escalated, the rule undermined the United States' overall pandemic response by deterring immigrant families from participating in public health measures and community support programs, thereby amplifying COVID-19's disparate impact on the health and well-being of families of color.<sup>1</sup> The updates in the current proposed rule are essential to prevent a recurrence of such devastating events, both in the current pandemic, as well as in future national emergencies.

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<sup>1</sup> Bernstein, Hamutal. "Immigrant Families Continued Avoiding the Safety Net during the COVID-19 Crisis." *Urban Institute*, February 2021, <https://www.urban.org/research/publication/immigrant-families-continued-avoiding-safety-net-during-covid-19-crisis>.

President Biden’s Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans states that the Federal Government should eliminate “sources of fear and other barriers that prevent immigrants from accessing government services available to them.”<sup>2</sup> This proposed rule represents a clear step in that direction by replacing the harmful 2019 public charge rule with a new policy based on two decades of practice that also creates clarity for immigrant families, strengthens our immigration system, and ensures consistency in application of the law.

Overall, we agree with DHS’s proposed improvements in this proposed regulation that build upon the original 1999 field guidance. The proposals in the NPRM are consistent with the will of Congress and will result in a clearer, more administrable public charge policy, including:

- Defining when a person is “primarily dependent” on the government with a focus on specific monthly cash assistance programs, in a manner consistent with case law and longstanding agency practice;
- Enumerating the categories of immigrants who are exempt from a public charge determination, consistent with the 2013 reauthorization of the Violence Against Women Act as well as other laws;
- Clarifying that use of benefits by an applicant’s family members will not be weighed against the applicant in a public charge determination; and
- Favorable consideration of a sponsor’s affidavit of support as an indication that the individual is not likely to become a public charge.

We appreciate that this NPRM recognizes that the use of health care, nutrition and housing assistance should not be a barrier to obtaining permanent residence status in our country. Congress has put these tools in place to help families thrive when they fall on hard times, purposely setting eligibility rules for them, and this rule aligns with those intentions.

In addition to supporting the overall proposed regulation, we have provided key recommendations below to ensure the final rule does not further contribute to chilling or discriminatory effects on immigrants and their families.

**The proposed rule should exclude institutionalization at government expense altogether from the definition of public charge.** Including Medicaid coverage for long term institutional care causes confusion and contributes to individuals and families not enrolling in our nation’s most essential health coverage program. By definition, long term institutionalization is used by individuals who are elderly or who have a disability—making this provision discriminatory.

**The proposed rule should exclude State, Tribal, territorial, and local benefits.** A number of states and localities have enacted, or are considering, inclusive initiatives to support their residents. These programs are an exercise of state powers and we do not want to undermine state and local efforts to strengthen their communities. Moreover, including non-federal benefits would unnecessarily complicate any public charge determination. Limiting consideration to federal benefits will result in a single, uniform, federal standard for all immigrants across the country.

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<sup>2</sup> President Joseph R. Biden. Executive Order: Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 2 February 2021.

**Finally, given Congress' decision to require an affidavit of support from certain immigrants, and consistent with longstanding practice and policy, we recommend that DHS clarify that an affidavit of support is generally sufficient to overcome this ground of inadmissibility.** In the absence of significant public charge concerns, an individual who signs an affidavit of support is legally responsible for providing the named immigrant with financial resources should it become necessary.

Finalizing a responsible public charge policy is critical to ensuring that our country has a humane immigration system. We urge you to speedily approve this rule to minimize the ongoing chilling effect of public charge on our constituents and families. As you work to finalize the rule, we also urge DHS to coordinate with other federal agencies to ensure a consistent and accurate dissemination of information to affected agencies and families.

Sincerely,



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Mazie K. Hirono  
United States Senator



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Cory A. Booker  
United States Senator



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Robert Menendez  
United States Senator



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Richard J. Durbin  
United States Senator



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Ron Wyden  
United States Senator



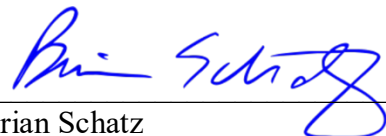
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Patty Murray  
United States Senator



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Dianne Feinstein  
United States Senator



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Brian Schatz  
United States Senator



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Tammy Duckworth  
United States Senator



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Elizabeth Warren  
United States Senator



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Ben Ray Luján  
United States Senator



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Edward J. Markey  
United States Senator



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Alex Padilla  
United States Senator