



April 22, 2022

Submitted via www.regulations.gov

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

*Re: DHS- Docket No. USCIS-2021-0013; Comments in Response to Proposed Rulemaking,
Public Charge Ground of Inadmissibility*

We respectfully submit the comments below in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM), published on February 24, 2022.

UnidosUS, previously known as the National Council of La Raza, is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers to the success and well-being of Latinos at the national and local levels. For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger.

We appreciate the priority that DHS is giving to addressing the long-problematic public charge rule. Identifying and addressing counterproductive rules and inflexible regulations that undermine the nation's ability to respond swiftly and effectively national emergencies must be part of any updated playbook that emerges from our nation's experience responding to COVID 19.

The public charge rule is a case in point. Latinos are significantly more likely to be part of a mixed-immigration status household,¹ and the fear and confusion generated by public charge concerns disproportionately affect Latino vaccine take-up rates,² as well as the willingness to seek appropriate health treatment³ and other forms of critical pandemic assistance.⁴ At the same time, Latinos and immigrants⁵ are overrepresented in frontline jobs and were among those most severely impacted by the health and economic consequences of the pandemic.⁶

Our comments, identify long-standing concerns with the public charge rule,⁷ and but also highlight implications for how the nation ensures that vulnerable communities are not left behind in moments of national crisis going forward.⁸ UnidosUS endorses and incorporates by reference herein the joint comments submitted by the Protecting Immigrant Families (PIF) campaign.

As an overarching matter, in designing the rule, we urge DHS to take full account of the harmful chilling effects of its overall approach and to make policy decisions that account for such effects by ensuring that the simplest types of categorical distinctions are made by the rule. Given the rule's history in raising

undue concerns and fear—especially compared to its very modest practical implications in terms of actual cases—DHS must develop clear, highly actionable, and easily communicated categories and decision rules to mitigate stigma and trauma and ensure that necessary supports can be accessed by all who are eligible at a moment of need. When the contours of the public charge inquiry are being implemented and communicated to interested parties, having a rule that is easy to explain and has bright-line implications will do much to mitigate the chilling effects and related harms. We thus urge that, as much as possible, the rule be streamlined and clear.

We also respectfully submit the following comments for your consideration:

- **UnidosUS supports the rule’s favorable consideration of affidavits of support.** We agree that a valid affidavit of support should be deemed sufficient under the rule to overcome a public charge test, unless “significant public charge factors” are present under the totality of the circumstances. Using the affidavit of support to mitigate issues arising under the statutory factors is the most administrable approach, which avoids burdens on adjudicators, immigration legal service providers, and applicants alike. In the absence of an affidavit of support, we urge continued consideration of the statutory factors in the “totality of the circumstances,” as no single factor should be treated as dispositive for the determination.
- **We support the definition of “receipt” in the NPRM.** This clarification will help to address confusion in the community by making clear that simply applying for public supports, being approved for such benefits in the future, assisting another to apply for benefits, or being in a household or family with someone who receives benefits does not count as receipt of benefits for purposes of a public charge determination. Moreover, we urge the agency to strengthen the provision by clarifying in the regulation that a parent’s application for certain public supports for an eligible U.S. citizen child does **not** make the parent a public charge. By making the parameters and reach of the provision very clear, such a statement or illustrative example in the regulation proper would help to reduce “chilling” effects in mixed-immigration status households.
- **The definition of cash assistance should exclude support or connections to any programs that are funded completely by state, local, tribal, and territorial governments.** We urge DHS to substantially refine its definition of cash assistance for purposes of determining if a person is “likely at any time to become primarily dependent on the government for subsistence” by making clear that the public charge inquiry is limited only to cash assistance for income maintenance under the two federal cash assistance programs—Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI)—and that it expressly excludes funding from or in-kind supports provided by state, tribal, territorial, or local programs. The core statutory public charge requirement is a matter of federal law and essentially a federal inquiry. Moreover, from a public policy perspective, the pandemic has made clear that states and localities often fill important gaps in the social safety net where the federal government falls short in reaching all families in need. Inclusion of these entities in the public charge determination could undermine this mechanism and programs, as they address important local human needs.
- **The public charge determination should not consider Medicaid, including for institutional long-term care.** According to the Kaiser Family Foundation, one in three people turning 65 will require nursing home care in their lives. Medicaid is the primary payer for long-term care in the United States, covering six in ten nursing home residents.⁹ To consider Medicaid would effectively penalize immigrants because Medicaid is the only meaningful payer for long-term care for them. In addition,

including any type of Medicaid benefit is highly likely to confuse eligible people and potentially lead them to forgo health care altogether.

- **DHS should use the preamble to the regulation to emphasize the importance of community trust in ensuring that the rule does no harm to eligible families in desperate need of emergency, temporary, or other essential human services.** We welcome the invitation to provide advice on how to “communicate with parents of U.S. citizen children that the receipt of benefits by such children would not be considered part of the public charge inadmissibility determination for the parents.” Based on our extensive experience working with our community-based Affiliates throughout the country, we know that official statements, guidance, and letters from government agencies carry significant weight within the community. We recommend that DHS publish and publicize a nonexclusive list of exempt benefits about which there is consistent public confusion as part of the preamble to the regulation and as a centerpiece of its public communications efforts. These include, but are not limited to, special purpose cash supports such as pandemic assistance, unemployment benefits, Supplemental Nutrition Assistance Program (SNAP) benefits, tax-related benefits such as the Child Tax Credit, and others. Such a communication could be periodically updated and republished as an agency policy memorandum as well.

We commend DHS for obtaining on-the-record letters from the Department of Health and Human Services and the Department of Agriculture about the proposed rule and its impact on health and human services programs such as Medicaid and TANF, and nutrition programs such as SNAP and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). UnidosUS strongly encourage DHS to obtain and include in the record for final rulemaking similar letters from:

- Social Security Administration, regarding Social Security and SSI
- Department of Housing and Urban Development, regarding federal housing programs, including pandemic assistance supports and those that had been included in 2019 final rule
- Department of Education, regarding student loans and other educational benefits
- Department of Labor, regarding unemployment and workers’ compensation benefits
- Federal Emergency Management Assistance, regarding disaster relief benefits
- Department of the Treasury, regarding tax credits such as rental assistance, Homeowner Assistance Fund, Earned Income Tax Credit, Child Tax Credit, and all COVID-19 relief payments

Thank you for your attention to this important policy. This effort will address long-standing concerns that the Latino community has had with the public charge policy, while also ensuring that the nation is better prepared to address the needs of vulnerable communities in the event of future national emergencies like the COVID-19 health crisis.

UnidosUS urges DHS to act quickly to issue a final rule that also includes the above referenced recommendations. Should you have any questions or need any further information, please contact Carlos A. Guevara at cguevara@unidosus.org.

Sincerely,

Eric Rodriguez
Senior Vice President
UnidosUS

¹ Jens Manuel Krogstad and Luis Noe-Bustamante, *Key facts about U.S. Latinos for National Hispanic Heritage Month* (Washington, DC: Pew Research Center, September 9, 2021), <https://www.pewresearch.org/fact-tank/2021/09/09/key-facts-about-u-s-latinos-for-national-hispanic-heritage-month/>; and Kelly Whitener and Alexandra Corcoran, *Getting Back on Track: A Detailed Look at Health Coverage Trends for Latino Children* (Washington, DC: Georgetown University Center for Children and Families, June 8, 2021), <https://ccf.georgetown.edu/2021/06/08/health-coverage-trends-for-latino-children/>.

² UnidosUS, “National Survey of Latino Parents: Economic Concerns and Vaccine Access for Children,” (Washington DC: UnidosUS, September 14, 2021), <https://www.unidosus.org/publications/national-survey-of-latino-parents-economic-concerns-and-vaccine-access-for-children/>.

³ Sharon Touw et al., “Immigrant Essential Workers Likely Avoided Medicaid and SNAP because of a Change to the Public Charge Rule,” *Health Affairs* 40, no. 7 (July 2021): 1090–098, <https://doi.org/10.1377/hlthaff.2021.00059>.

⁴ Hamutal Bernstein et al., *Immigrant-Serving Organizations’ Perspectives on the COVID-19 Crisis* (Washington, DC: Urban Institute, August 27, 2020), <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.

⁵ The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. This document may also refer to this population as “Latinx” to represent the diversity of gender identities and expressions that are present in the community.

⁶ 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/campaigns/coronavirus-covid-19/Latino-COVID-19-Dashboard>.

⁷ Hamutal Bernstein et al., *Amid confusion over the public charge rule, immigrant families continued avoiding public benefits in 2019* (Washington, DC: Urban Institute, May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_2.pdf; and 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* (Washington, DC: Migration Policy Institute, December 2020), <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

⁸ Dolores Acevedo-Garcia et al., “Restoring an Inclusionary Safety Net for Children in Immigrant Families: A Review of Three Social Policies,” *Health Affairs* 40, no. 7 (2021): 1099–1107, <https://doi.org/10.1377/hlthaff.2021.00206>.

⁹ Kaiser Family Foundation, *Medicaid’s Role in Nursing Home Care* (San Francisco: Kaiser Family Foundation, June 2017), <https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>.