



## ♥ Ensuring a Place at the Table for Every Family

Submitted at: [www.regulations.gov](http://www.regulations.gov)

Andrew Parker, Branch Chief  
Residents and Admissibility Branch, Residents and Naturalization Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
DHS, 5900 Capital Gateway Drive  
Camp Springs MD 20746

Re: **Public Charge Ground of Inadmissibility, Proposed Rulemaking,  
DHS Docket No. USCIS– 2021–0013**

Dear Chief Parker:

On behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), we are submitting these comments in response to the above-captioned NPRM.

National PLACE and our 75 local, state and national member organizations are committed to ensuring that families and family-led organizations are at the table when decisions regarding children and families are being made, and that our voices, experiences, and perspectives meaningfully influence those decisions. We have reviewed the Notice of Proposed Rulemaking and include our thoughts below. Our primary goal is to strengthen the voice of families and family-led organizations at decision-making tables on issues impacting our nation's children and families, especially those who face the greatest challenges and have the poorest outcomes, including children with disabilities, children of color, immigrant children, low-income children, and LGBTQ+ children, and their families. All of our members serve immigrant and mixed-immigrant status families, and so have direct experience with the chilling effect of the previous Administration's changes to the Public Charge Ground of Inadmissibility on families accessing the critical and essential services to which they and their children are entitled.

In addition to our comments below which are focused on the role of families of immigrant children, youth, and adults, National PLACE supports the comments of the Consortium for Constituents with Disabilities (CCD) and coalition members of the Leadership Conference for Civil and Human Rights (Leadership Conference), both of which we are members, as well as the Protecting Immigrant Families campaign.

## **Introduction**

We appreciate the opportunity to comment on the Department's Notice of Proposed Rulemaking concerning its public charge rule. The public charge rule reflects an ugly history of xenophobia, racism, and prejudice against people who are impoverished, and it is at odds with the founding principles of the United States. While elimination of the rule is a matter for Congress, we urge the US Department of Homeland Security (DHS) to adopt the narrowest possible interpretation of the rule within its authority, to avoid needless harms to our immigrant communities, including immigrants with disabilities, immigrants speaking languages other than English, low-income immigrants, LGBTQI+ immigrants, and immigrants who are parents of children and youth needing services.

The public charge rule is not only of serious concern to National PLACE because of its inappropriate use to target immigrants for adverse treatment based on their disabilities or need for health services, but also because it places immigrant parents in an untenable position regarding accessing services and supports for their children and for themselves for fear of being labeled a public charge that would lead to a decision to deny them the right to stay in the US – including if they have children who are US citizens.

While National PLACE notes that the current Administration's decision to return to the 1999 Field Guidance on a temporary basis was an important move to avoid the most dramatic forms of discrimination and the most draconian outcomes for children and families, it is still far from equitable and continues to place families and their children in grave jeopardy. Further, despite the current Administration's prompt efforts to end this policy, data reveals there is little awareness of this policy reversal among individuals in immigrant and mixed-status families. For example, a September 2021 poll of 1,000 mostly Latinx and AAPI individuals in immigrant families found that nearly half (46%) of families who needed assistance during the COVID-19 pandemic did not apply for help due to concerns over immigrant status. We strongly urge DHS to provide funding to trusted community and state-level organizations – including those that serve immigrant families who have members with disabilities or special healthcare needs, or who are LGBTQI+, to conduct outreach and education to immigrants and their families in a culturally and linguistically appropriate manner.

National PLACE also strongly urges DHS to do all within its power to inform Congress of the life-disrupting impact of even the 1999 field guidance on children and families so that Congress has the information and incentive it needs to change this discriminatory, abusive law.

Until the law is changed, National PLACE supports the NPRM's recognition that the use of critical supports such as healthcare, nutrition, and housing assistance programs should in no way be linked to the exclusionary "public charge" provision, especially since these programs were created to help workers and families, including eligible immigrants and US citizen family members in immigrant families. Overall, we strongly support the proposed updates, clarifications and improvements to long-standing public charge policy.

## **Specific Areas of Support and Recommendations**

- National PLACE supports the exemptions for survivors of trafficking, domestic violence, and other serious crimes (and recommend a similar clarification for the Violence Against Women Act self-petitioners and qualified immigrants in 8 USC 1641(c) consistent with Congressional intent)

- Definitions – Receipt of public benefits. National PLACE strongly supports the definition which specifically clarifies that an individual is not receiving a benefit unless they are listed as a beneficiary, so that receipt of a benefit by a different member of the applicant’s family or household should not be a factor in the applicant’s public charge assessment. Further, we appreciate the definition’s clarification that simply applying for a benefit, applying for a benefit on behalf of another person (such as a child), or assisting someone with an application does not constitute “receipt” of a benefit. We hope that this clarification will mitigate the chilling effect caused by uncertainty and fear in immigrant communities that led to significant drops in immigrants accessing critical services to which they and their children were entitled, including Supplemental Nutrition Assistance Programs, school meal program, WIC, and other food programs, due to immigration-related concerns.
- Definitions – Likely at any time to become a public charge. National PLACE strongly agrees with the proposal to exclude programs that are essential to a family’s health, stability, and ability to earn income, including housing, nutrition assistance, and health programs. These programs are essential for all parents who work hard in low-wage positions that do not provide employer-sponsored health coverage or an adequate, living wage for their families. We also support CCD’s call to exclude long-term institutionalization and receipt of SSI, factors that solely apply to people with disabilities, from this definition.
- “Primarily dependent” – While we agree with DHS that “primarily dependent” rather than a lesser level of dependence is the right standard, we agree with CCD that “for a recent and sustained amount of time with little prospect for change” should be added.
- Impact of presence of a disability – We agree that the presence of a disability as defined by Section 504 of the Rehabilitation Act or any other medical condition is not alone a sufficient basis to determine that a noncitizen is likely at any time to become a public charge. Many disabilities do not impact an individual’s health or require extensive medical care, and the vast majority of people with disabilities do not use institutional care. We recommend that DHS take specific steps, such as releasing guidance for US Citizenship and Immigrant Services, that ensures that the proposed rule’s language is implemented appropriately and that disability alone is not considered relevant to the “health” mandatory factor.
- Totality of circumstances – We strongly agree with DHS’s proposal that the “[t]he determination of an alien’s likelihood of becoming a public charge at any time in the future must be based on the totality of the alien’s circumstances.” Specifically, we support and recommend that DHS retain the proposed rule’s language that an applicant’s use of countable benefits and any one statutory factor do not automatically make an individual a public charge. In addition, we recommend explicit language that warns of the degree to which implicit bias and stereotypes about the quality of life of people with significant disabilities could shape an assessment of the total circumstances of a disabled person’s life, including an undervaluation of that person’s education, skills, and present state of health. Healthcare providers and many others throughout our society believe that people with disabilities have a worse quality of life; this implicit bias and assumptions about people with disabilities are likely to be just as present in immigration officers as in others in our society.
- Written denial decisions – National PLACE enthusiastically endorses the requirement for written denial decisions that “reflect consideration of each of the [required] factors” and “specifically articulate the reasons for the officer’s determination,” similar to a longstanding requirement in the 1999 field guidance. This is of vital importance given the reality of both implicit and explicit bias among individuals who are making these determinations.

- National PLACE endorses the recommendations for key improvements proposed by the Center for Law and Social Policy (CLASP), namely:
  - DHS should not consider the use of state, local, Tribal or territorial benefits in a public charge determination. This undermines non-federal jurisdictions’ ability to protect the health, safety and well-being of their residents.
  - DHS should explicitly state that use of benefit as a child may not be included in a public charge determination, as there is no evidence that use of such benefits as a child leads to future reliance on government programs, and in fact, access to supports by children has actually been shown to be associated with improvements to future economic outcomes. In fact, DHS should develop a presumption that children cannot be a public charge unless there is compelling evidence to the contrary.
- National PLACE endorses the recommendations for key improvements submitted by UnidosUS:
  - “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.”

### **Racist Implications of the Public Charge Rule**

It is important to note that the Public Charge rule has been implemented in racist ways. For example,

data published by the Department of State on Immigrant Visas (IV) issued and refusal rates for IVs pursuant to INA 212 (a)(4) demonstrate that the refusal ratio is significantly lower for Europeans (mostly White) than for Blacks/Asians/Latinos, in part because of the racist application of the rules.

In fact, there is no way the rule can be uniformly and fairly applied because (a) there is a great deal of officer discretion, (b) it is not necessarily based on evidence but often on a prospective evaluation of what may happen in the future (leading to the inevitable consideration within the context of the officer's own opinions or beliefs, and (c) implicit bias is rampant throughout all of our policing systems including the immigration system.

## **Conclusion**

In conclusion, we appreciate the opportunity to comment on the Notice of Proposed Rulemaking regarding Public Charge Ground of Inadmissibility, but strongly support the DHS narrow interpretation of the law with the goal of minimizing the harm to children and families, especially those who already face the greatest challenges to meaningful, sustainable lives. The members of National PLACE see daily the harmful impacts on children and families when immigrants are discouraged from seeking physical and mental health care, nutrition, or housing benefits for which they are eligible. As noted above, our members also saw the devastating impacts of the discussions about and the adoption of the 2019 public charge rule that caused fear and confusion among the immigrant community and significant reduction in the extent to which immigrant families interacted with the government even in areas that were not covered by that rule, and even for families who were citizens and thus not subject to the public charge test for naturalization. This chilling effect was particularly harmful, not only to immigrant children and families, but to all of our communities because of how it reduced immigrant access to healthcare related to COVID-19. And even though the 2019 rule stopped being implemented in early 2021, that chilling effect continues. Pregnant and parenting women are not accessing WIC benefits. Families are not accessing SNAP benefits or free or reduced school lunch even for their eligible children. This will have devastating impacts on these children and families, and on our larger society, for decades to come.

Finally, National PLACE strongly recommends that any decisions made about access of children and families to public benefits, services, and resources be conducted with the active and meaningful participation of representatives of the very immigrant parents and families who will be most impacted by those decisions as well as the family/parent, immigrant, disability, and other organizations that provide them with information and support and represent their interests. Once the rule is finalized, National PLACE reiterates our call for funding to provide outreach and education to immigrant communities and the organizations that serve them about the new rule so that immigrant families feel safe in applying for supports and services for themselves and their children.

For any questions or for additional information about this letter and its recommendations, please contact Diana Autin, Executive Director of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), at [dautin@parentsatthetable.org](mailto:dautin@parentsatthetable.org).

Sincerely:



Diana MTK Autin, Executive Director  
On behalf of National PLACE