

May 19, 2021

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

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

I am writing on behalf of RESULTS 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. RESULTS believes that effective and accurate communication with immigrants and their families lays the groundwork for strong, poverty-free communities. We must ensure that immigrant communities are receiving clear, accurate information regarding these rule changes. As an anti-poverty organization that supports grassroots volunteers across the country, our network has witnessed firsthand how frequently noncitizens and their families forgo critical basic needs due to fears of being deemed a "public charge".

RESULTS creates the public and political will to end poverty by empowering individuals to exercise their personal and political power for change. We support a network of more than 90 chapters with over 650 active volunteers (and an additional 7,000 members in our e-mail action network) across the U.S. Our grassroots members educate Congress and their staff, work with the media, and build awareness within their communities of the policies that influence everything from nutrition and health to the budget and taxes.

We commend USCIS for removing the 2019 public charge rule from the Code of Federal Regulations and restoring the 1999 Field Guidance. [However, the previous administration has done more harm than simply instating this rule.](#) More work must be done to end the policy's lasting chilling effects and ensure all families can access the anti-poverty assistance they need. Due to these enduring effects, 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 to clarify definitions based upon the 1999 Field Guidance.** 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. 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.

### **1. Outreach and Public Education Campaign**

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.

Despite the reversal of the 2019 public charge policy, there are daily stories within our network where families with immigrants forgo simply applying for assistance programs out of fright. Individuals and families in desperate need of food and water will refuse to consider the Supplemental Nutrition Assistance Program (SNAP) or other programs for fear of being a public charge, despite assistance such as Pandemic EBT is not a threat. Moreover, families frequently report being unaware that the policy has changed, but even after learning of the Department's reversal, hesitancy remains.

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.
- 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.

In order to do this outreach and education most effectively, we encourage the Department engage with respected leaders in noncitizen communities around the country. Only through active engagement and communication with these communities will noncitizens understand the complete impacts of this rule reversal.

## 2. 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. Moreover, through this rulemaking, it would become more difficult for a future administration to reverse.

### ***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 cannot issue guidance that improperly broadens the definitions.
- Set time periods for the forward and backward looking components of the totality of the circumstances test.

### ***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.***

- Clearly identify 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.

**3. 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 (LPR) 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)."
- 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.

In conclusion, we request that our comment be considered part of the formal administrative record.

RESULTS recognizes that immigrants and their families are crucial member of strong, poverty-free communities. Ending poverty, which lies at the heart of our work, begins with ensuring clear, accurate communication regarding rule changes with noncitizen communities that will assist in reducing poverty. In order to lay the groundwork to rebuild trust with noncitizen communities and build back better, the Department should 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.

Thank you for the opportunity to submit comments. Please do not hesitate to contact me at if you have any questions or need any further information.

Sincerely,



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