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Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

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

We are writing on behalf of **the Protecting Immigrant Families Illinois (PIF-IL) coalition and 76 state and local organizations in Illinois** in response to the Department of Homeland Security's (DHS) notice of proposed rulemaking (NPRM) regarding the public charge ground of inadmissibility, published on February 24, 2022. Note that some of our organizations are also submitting their own more detailed comments in response to the NPRM.

The PIF-IL coalition is a diverse alliance of advocates and service providers working in such areas as immigrant rights, anti-poverty, human services, and health access, that are committed to defending access to essential needs services for all Illinoisans. Our member organizations and allies recognize that Illinois' strength derives from its multicultural diversity and resilient character that is fueled by the hope and aspirations of the 1.8 million immigrants who call Illinois home. Immigrants are a vital part of our neighborhoods, communities, and workforce and critical contributors to the fiscal health of our state and nation--as exemplified by the \$8 billion in local and state taxes and \$13.4 billion in federal taxes immigrant households paid in 2019.

The immigrant community is integral to the Illinois labor force, filling essential gaps in key service, health care and manufacturing industries but often earning low wages in jobs that provide few if any employment benefits. While their circumstances may be humble, time and again, our immigrant neighbors make important contributions to our communities – caring for our most vulnerable, teaching our children, keeping us fed, and enriching the public fisc. Accordingly, our immigration policies should not discourage immigrants and their family members from seeking government-funded services and supports for which they are eligible (including physical and mental health care, nutrition, housing and certain cash benefits).

For this reason, we first and foremost urge Congress to take swift action to repeal the antiquated and discriminatory “public charge” provision of the Immigration and Nationality Act (INA). Our laws should not penalize immigrants for any lack of educational and economic opportunities in their native countries, or discourage them and their families from accessing life-saving, vital resources, and in so doing further marginalizing immigrant communities. We recognize, however, that at

present it remains a provision of the INA. We thus urge DHS to move quickly to improve and finalize this proposed rule.

Overall, we urge you to keep top-of-mind that the final public charge rule must be clear so that the agency, immigrants, their families, and service providers can understand how a public charge assessment will be determined. This is particularly important because lack of clarity under the 2019 Public Charge Rule created significant confusion and fear that caused immigrant families to avoid interacting with the government and forgo critical government services for which they were eligible. Likewise, we stress that the final public charge rule must include guardrails to prevent a public charge determination from being used as a tool to discriminate against people of color, women, people with disabilities, or older adults.

We commend DHS for proposing significant improvements to the 1999 guidance. These improvements will reduce the bias and harm resulting from the application of the INA's public charge provision.

**We offer our strong support for the following NPRM provisions to be included in a final rule:**

- Defining “receipt” of public benefits, specifically to exclude family members’ use of benefits from an individual's public charge determination;
  - This provision is critical to ensuring that parents seek benefits for their U.S. citizen children, who are not subject to a public charge determination although their parents or other relatives may seek permanent resident status in the future.
  - In Illinois, over 644,000 U.S. citizen children have a parent who was born outside the U.S.
- Requiring immigration officials to provide written explanations for denials that discuss consideration of all factors due to public charge;
- Not including quantified standards for the “minimum factors” listed in the public charge statute;
- Asserting that adequate affidavits of support should be “considered favorably (i.e., a positive factor that makes an applicant less likely at any time to become a public charge in the totality of the circumstances);
  - As discussed more fully below, PIF-IL recommends that a sufficient affidavit of support should create a presumption that the applicant overcomes the public charge ground of inadmissibility.
- Excluding from a public charge assessment the use of home and community-based services and short-term medical rehabilitation paid for by the government.

We also propose strengthening the proposed rule in several key areas. The improvements detailed below are critical to ensuring an equitable and clear final public charge rule consistent with President Biden’s direction that DHS and other federal agencies eliminate “barriers that prevent immigrants from accessing government services available to them.”

**We recommend the following improvements to the NPRM in a final rule:**

- While we applaud DHS defining “likely at any time to become a public charge” as “likely at any time to become primarily dependent” on certain public benefits for their subsistence, we believe that **such reliance should not be taken into account unless that reliance is *permanent***. There are many scenarios where people receive government benefits for a period of time but not permanently—for example, if an individual is currently using a benefit but is about to get a raise or a new job and will no longer access it, or if someone is recovering from a temporary illness or treatment and relying on a federal government benefit to recuperate.
- **The final public charge rule should NOT include any consideration of any public benefit use with the exception of TANF and SSI, and if these two programs are considered, they should be explicitly listed within the language of the rule itself.** This would avoid the chilling effect we witnessed when the 2019 public charge rule was in effect. Individuals should no longer be deterred from seeking essential support services and benefits for which they qualify.
- **Medicaid, including for institutional long-term care, should not be considered in any public charge determination.** Consideration of *any type of Medicaid benefit* will confuse people and lead them to forgo health coverage, to the detriment of the public health of the entire community. Almost one in five foreign-born Illinois residents (18%) are age 65 or older. Illinois deeply values the health of its immigrant population, creating and funding Medicaid-like health coverage programs for children under age 19 and for adults age 55 and older, regardless of their immigration status. Medicaid is the primary payer for long-term care in the US, covering six in ten nursing home residents. We should not penalize immigrants for our national policy choices that make Medicaid the only meaningful payer for long-term care and make it difficult to get care at home and force people into institutional care. Moreover, enrollment assistants, case workers, health care providers and community health workers throughout Illinois have over the past few years consistently voiced the concern and reluctance immigrants of every immigration status have for enrolling in health programs they are eligible for due to the fact that the public charge’s rule penalizes use of long-term care institutionalization in Medicaid coverage. The only way to combat this pervasive chill is to exclude Medicaid *in toto*.
- **No programs funded completely by state, local, tribal and territorial governments should be considered in a public charge determination.** Our federal system reserves to state and local governments the power to fund programs for the benefit of residents of their jurisdictions. The State of Illinois and its localities have a compelling interest in promoting health and safety that includes providing benefits at their own expense without barriers caused by federal policies. For instance, Illinois prioritizes the public health and well-being of its residents by offering exclusively state-funded Medicaid-like coverage to low-income children, pregnant people, and older adults and seniors regardless of immigration status, as

well as state-funded cash and food assistance for foreign-born victims of trafficking, torture, or other serious crimes and their derivative family members.

- **The final rule should state that a properly filed affidavit of support satisfies the requirements of INA 212(a)(4) and creates a *presumption* that the applicant overcomes the public charge ground of inadmissibility.** This would be consistent with the USCIS adjudicator’s field manual in effect under the 1999 field guidance, which indicated that the affidavit of support’s purpose “is to overcome the public charge ground of inadmissibility.” DHS should prohibit immigration officials from questioning the credibility or motives of a sponsor who signs an affidavit of support, and require that officers only review the affidavits’ legal validity. Finally, relying on the affidavit of support to provide a favorable presumption is easier to administer, providing an effective way to apply a clear, fair, and transparent decisionmaking tool, and avoiding potential discrimination.
- **The final rule should require that if DHS identifies a circumstance that might make someone likely to meet the definition of a public charge, it must look further to the totality of circumstances to see if there is evidence to overcome the circumstance.** If adjudicators identify a circumstance that could suggest that a person is “likely at any time to become primarily dependent on the government for subsistence...,” then they should look to *all* of the factors in the totality of circumstances to see if there is also evidence to overcome the circumstance. The judicial and administrative decisions that were used to inform the addition of the five “totality of circumstances” factors to the statute in 1996 overwhelmingly found immigrants *not* excludable based on one or more of the factors when considering the totality of circumstances. In other words, the five statutory factors and totality of circumstances test were never intended to be a list of negative and positive factors to be weighed individually in every case, but factors that might help a person overcome public charge concerns. DHS should also provide reasonable opportunities for applicants to address or cure any concerns about the statutory factors.

The changes described above are critical in encouraging millions of immigrants to get the help and care they need, so they can continue to build a healthier, stronger future in Illinois. The constantly changing public charge policies have led to confusion among many immigrants and their families, contributing to the still present chilling effect. Publishing a fair and reasonable final rule as quickly as possible, as we have recommended here, is the best way to limit this harm.

We urge DHS to move as expeditiously as possible to issue a Final Rule.

Sincerely,

**PIF-IL Executive Committee Members**

Shriver Center on Poverty Law  
Legal Council for Health Justice  
Latino Policy Forum  
Illinois Coalition for Immigrant and Refugee Rights

**PIF-IL Steering Committee Members**

DuPage Federation on Human Services Reform  
American Academy of Pediatrics, Illinois Chapter  
AIDS Foundation of Chicago  
Start Early  
National Immigrant Justice Center  
Housing Action Illinois  
Healthy Illinois  
Erie Family Health  
University YMCA-New American Welcome Center  
Asian Human Services, Inc.  
Health & Medicine Policy Research Group  
Greater Chicago Food Depository  
Catholic Charities, Diocese of Joliet

**Other Members & Allies**

Logan Square Neighborhood Association  
Heartland Alliance  
Chicago Citywide Literacy Coalition  
AgeOptions  
Illinois Public Health Institute  
Legal Action Chicago  
EverThrive Chicago  
YWCA of the University of Illinois  
Illinois Primary Health Care Association  
Illinois Partners for Human Service  
Southwest Suburban Immigrant Project  
Cook County Health  
Illinois Collaboration on Youth  
NAMI Chicago  
Mujeres Latinas en Accion  
Unitarian Universalist Advocacy Network of Illinois  
Arab American Family Services  
Indo-American Center  
Chicago Commons  
Chinese American Service League  
Refugee Action Network  
RefugeeOne  
Hispanic American Community Education and Services  
HANA Center  
FEDECEMI/Casa Michoacán  
Chicago Community and Workers Rights  
Jewish Council on Urban Affairs  
Alliance of Filipinos for Immigrant Rights and Empowerment  
The Resurrection Project  
Refugee & Immigrant Well-being Project  
Office of Illinois State Senator Cristina Pacione-Zayas, 20th District  
Enlace Chicago  
VNA Foundation  
Holy Spirit Missionary Sisters, USA-JPIC  
Asian Americans Advancing Justice Chicago  
Sisters of Charity, BVM

Sanctuary Task Force, Episcopal Diocese of Chicago  
National Coalition for Latinxs with Disabilities (CNLD)  
Polish American Association  
Provincial Council Clerics of St. Viator  
Healthy Communities Foundation  
Coalition for a Better Chinese American Community  
Syrian Community Network  
Centro de Trabajadores Unidos (United Workers Center)  
United African Organization  
Access Living  
Binational Institute of Human Development  
YWCA Southwestern Illinois  
La Casa Norte  
Chicago Workers Collaborative  
Refugee Education & Adventure Challenge (REACH)  
Instituto del Progreso Latino  
Brighton Park Neighborhood Council  
OLMC Community Center Casa Esperanza  
Catholic Charities of the Archdiocese of Chicago  
Common Pantry  
Lake County Health Department and Community Health Center  
Family Focus  
Southwest Organizing Project