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*National Advocates for
Asian American, Native Hawaiian &
Pacific Islander Health*

April 25, 2022

Samantha Deshombres, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
Submitted via www.regulations.gov

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

Dear Chief Deshombres:

Thank you for the opportunity to respond to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking, Public Charge Ground of Inadmissibility (DHS Docket No. USCIS-2021-0013). The Asian & Pacific Islander American Health Forum commends DHS for proposing long-awaited changes to the public charge rule and offers recommendations to improve the proposed rule. While we continue to urge congress to eliminate barriers to immigration and make changes to immigration law, we are encouraged to see that the proposed rule moves towards a more humane approach to implementing the law. If finalized with our recommendations, the rule would provide clearer guidelines and ensure the health and safety of immigrants and immigrant families.

APIAHF is the nation's leading health policy organization working to advance the health and well-being of over 25 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPI) across the U.S. and territories. APIAHF works to improve health access to and the quality of care for communities who are predominantly immigrant, many of whom are limited English proficient, and may be new to the U.S. healthcare system or unfamiliar with private or public coverage. We have longstanding relationships with over 150 community-based organizations in over 40 states and the Pacific, to whom we provide capacity building, advocacy and technical assistance.

We draw upon this extensive experience and the relationships fostered to understand the needs and barriers faced by AA and NHPI communities across the country, and the impact that changes outlined in the proposed rule would have on those individuals and communities. Per the request of the NPRM, this letter will address: public communications to mitigate chilling effects of the 2019 final rule; support for proposed changes; and language that will further improve the proposed rule.

I. Public Communications Around the Final Rule to Mitigate Chilling Effects

DHS's recognition of the chilling effects of the 2019 final rule is a critical step in creating a new public charge rule that is fair and humane.

AA and NHPI communities are the fastest growing and among the most diverse groups, both ethnically and social economically, in the U.S.¹ This diversity also expands to immigration and citizenship status, with 65% of AA and NHPI being born outside of the U.S.² Thus, the impact of the 2019 final rule was greatly felt among AA and NHPI immigrant families, including mixed status families and households.

The impact of the 2019 final rule continues to be felt in Medicaid enrollment and renewals. For AA and NHPI families, 1.5 million noncitizen Asian Americans and Pacific Islanders in families that use Medicaid or the Children's Health Insurance Program (CHIP) were at risk of triggering inadmissibility on public charge grounds.³ An additional 1 million U.S. citizen Asian American and Pacific Islander children live with their immigrant parents in families that use Medicaid or CHIP; under the 2019 final rule, children's use of benefits, regardless of if they are U.S.-born, counted against their parents' immigration applications.⁴ As a result, many families forwent and continue to forgo health coverage in fear of immigration repercussions.⁵

We appreciate DHS's efforts to remedy the harmful impacts of the 2019 final rule. While DHS has already taken steps to communicate that the 2019 final rule is no longer in effect, much more needs to be done to reach affected communities.⁶ We offer the following recommendation on communicating and outreaching to affected communities.

Recommendations

- **DHS and partner agencies must have culturally and linguistically accessible information.**
Over 6 million AA and NHPs are LEP, with a large proportion of the LEP population being our elders. It is critical to have culturally and linguistically accessible information, including outreach materials, on public charge available for LEP individuals. Failing to provide readily accessible information will further isolate and marginalize significant populations of our community.
- **DHS, in conjunction with the Department of Health and Human Services, must engage in community outreach to Community Health Centers and Local Human Services Agencies.**
Community health centers and state/local human services agencies play a critical role in providing and

¹ Abby Budiman and Neil G. Ruiz, *Asian Americans are the fastest-growing racial or ethnic group in the U.S.*, Pew Research Center (April 9, 2021). Available at: <https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/>.

² U.S. Census Bureau (2020). *Asian Alone or in Any Combination by Selected Groups, 2016-2020 American Community Survey 5-Year Estimates*; and Census Bureau (2020). *Native Hawaiian and Other Pacific Islander Alone or in Combination by Selected Groups, 2016-2020 American Community Survey 5-Year Estimates*.

³ Jeanne Batalova, Michael Fix and Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, Migration Policy Institute. (June 2018). Available at: <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families> Table 5.

⁴ Ibid, Supplemental Data Tables

⁵ Kaiser Family Foundation, *Impact of Shifting Immigration Policy on Medicaid Enrollment and Utilization of Care among Health Center Patients* (Oct. 15, 2019). Available at: <https://www.kff.org/report-section/impact-of-shifting-immigration-policy-on-medicare-enrollment-and-utilization-of-care-among-health-center-patients-issue-brief/>.

⁶ *Public Charge Resources*, U.S. Citizenship and Immigration Services, Department of Homeland Security <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources> (last updated Nov. 17, 2021). U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Public Charge Interagency Letter (Nov. 16, 2021), https://www.uscis.gov/sites/default/files/document/legal-docs/USCIS_Public_Charge_Interagency_Letter_11.16.21.pdf. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Public Charge and Safeguarding Beneficiary Information (July 22, 2021).

navigating care to underserved populations, including low-income and linguistically isolated AA and NHPI immigrant communities. Given the detrimental impact of the 2019 final rule, families are fearful of seeking life-saving care and other public benefits. We recommend that DHS, with the Department of Health and Human Services' Office for Civil Rights and other relevant agencies, partner with community health centers and human services agencies in training their staff on public charge and disseminating in-language and culturally appropriate materials.

- **Support partnerships with community-based organizations.**

Community-based organizations (CBOs) often serve as effective public outreach partners and are trusted to give transparent responses to community concerns. Given their unique relationships with and knowledge of the communities they serve, CBOs are better positioned to collect and disseminate information on sensitive topics, especially as community members may have greater trust in CBOs than immigration or law enforcement agencies.

II. SUPPORT FOR PROPOSED CHANGES TO PUBLIC CHARGE RULE

APIAHF supports many of the updated provisions in the proposed rule and urge DHS to move forward with the following provisions in the final rule:

Definitions (8 CFR § 212.21)

- Likely at any time to become a public charge

APIAHF supports DHS's decision to define "likely at any time to become a public charge," as someone who is likely to become *primarily dependent* on the government for subsistence. This definition focusing on "primarily dependent" was used in the 1999 Interim Field Guidance and reflects the legislative intent of Congress of the time. The 2019 public charge rule, which gave a much broader definition, was a clear departure from intent and purpose of the rule.

- Public Benefits

APIAHF supports DHS's decision to exempt public benefits like Medicaid, SNAP, WIC and subsidized housing from being considered grounds for public charge inadmissibility. These safety net programs are widely used and are not indicative of primary dependence. And as DHS recognizes, the list of public benefits is consistent with 1999 Interim Field Guidance; case law; past practices of DHS and the former Immigration & Nationality Services, and Department of State (DOS); and the public policy considerations that have consistently informed administrative policymaking in this area.⁷

- Receipt of Public Benefits

APIAHF supports the definition of "receipt" of countable benefits suggested in the proposed rule. It is critical that only when actual receipt of a benefit is conferred that it may be used to consider public charge inadmissibility. DHS should continue to emphasize that preliminary actions such as applying for a benefit or being denied/approved for a benefit; assisting another person in the application process; or a family member's receipt of a benefit should not be grounds for public charge inadmissibility.

⁷ See 64 FR 28689, 28690 (May 26, 1999) and 64 FR 28676, 28677 (May 26, 1999). See 64 FR 28689, 28690 (May 26, 1999) and 64 FR 28676, 28677 (May 26, 1999).

Public Charge Inadmissibility Determination (8 CFR § 212.22)

- Consideration of Affidavit of Support

APIAHF supports the emphasis on the affidavit of support to be considered during public charge inadmissibility determination. The affidavit of support has been long used by DOS and other agencies to balance the five factors such as age, education, financial resources, health, and family status. The affidavit of support gives greater and individualized insight to an applicant's circumstances compared to the five factors mentioned above that may arbitrarily count against an applicant seeking admission into the U.S. Using the five factors alone raises concerns of bias and gives individual adjudicators virtually unfettered discretion to act upon these biases.

- Receipt of Public Benefits by Those Granted Refugee Benefits

APIAHF supports DHS's reaffirmation that persons granted humanitarian forms of relief shall be eligible for benefits available to refugees without public charge implication, including trafficking victims, unaccompanied minors, and Afghan Special Immigrant Visa holders. As DHS noted in the NPRM, Congress expressly intended that individuals granted humanitarian relief should be able to receive public benefits without risking adverse immigration consequences, thus penalizing such noncitizens for using benefits would undermine the intent of Congress's exemption.

III. RECOMMENDATIONS TO IMPROVE PROPOSED RULE

Many improvements are made in the proposed rule that bends towards equitable treatment of all immigrants. However, we urge DHS to consider the following recommendation to further improve the proposed rule.

Definitions (8 CFR § 212.21)

- Public Cash assistance for income maintenance

APIAHF opposes the inclusion of State, Tribal, territorial, or local benefits, including programs providing cash assistance for income maintenance and recommends that they are removed from the regulatory text.

Programs funded by state and local government —including any cash assistance that they choose to provide—are an exercise of the powers constitutionally reserved to the states. States and localities have a compelling interest in promoting health and safety, which includes their ability to provide benefits at their own expense without barriers caused by federal policies. The Attorney Generals of 19 states collectively commented on the public charge ANPRM advocating that any type of state cash assistance, whether filling a gap for people ineligible for TANF, or cash for specific, supplemental purposes, should not count in a public charge determination, stating: "The undersigned States are charged with safeguarding the public health and promoting the welfare of the people in their jurisdictions. To that end, States make independent public policy determinations, including with respect to providing public benefits to all individuals within their jurisdictions regardless of immigration status."⁸

- Long-term institutionalization at government expense

⁸ State Attorney General's Comment on Advance Notice of Proposed Rulemaking, Public Charge Ground of Inadmissibility, (October 22, 2021). Available at: <https://www.regulations.gov/comment/USCIS-2021-0013-0116>.

APIAHF urges DHS to exclude long-term institutionalization at government expense from the definition of public charge. Medicaid is the primary payer of long-term care in the U.S. and covers 6 in 10 nursing home residents.⁹ Exempting certain Medicaid coverage, while penalizing others, causes confusion and contributes to the chilling effect that continues to deter certain immigrants from enrolling in Medicaid and broadening health disparities in immigrant populations. The confusion may also arise when considering community and home-based care provided by Medicaid for many elders and those with disabilities. The best way to mitigate the chilling effect and the confusion that has occurred is to exclude Medicaid in total from public charge determination.

IV. Conclusion

APIAHF applauds DHS for its efforts to improve the public charge rule and reducing the chilling effects of the previous 2019 public charge final rule. The proposed rule, coupled with the recommendations provided, will ensure that the health and well-being of immigrants and immigrant families are protected as they are integral parts of the American fabric.

We urge DHS to include the recommendations above and move swiftly to finalize the rule. All citations included in this letter should be considered as included in the comments themselves and we expect that DHS will review each of them as if they were. Please contact policy@apiahf.org for any questions.

Sincerely

A handwritten signature in blue ink, appearing to read 'JKC', with a stylized flourish at the end.

Juliet K. Choi
President & CEO

⁹ Kaiser Family Foundation, *Medicaid's Role In Nursing Home Care* (2017). Available at <https://files.kff.org/attachment/Infographic-Medicoids-Role-in-Nursing-Home-Care>.