



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

April 25, 2022

Department of Homeland Security
Via Regulations.gov

RE: Public Charge Ground of Inadmissibility
DHS Docket No. USCIS-2021-0013; RIN: 1615-AC74

The City of New York (“the City” or “NYC”) and its municipal hospital system, NYC Health + Hospitals welcome the opportunity to submit this comment in support of the Department of Homeland Security’s (“DHS”) Notice of Proposed Rulemaking regarding the Public Charge Ground of Inadmissibility (“Proposed Rule”) and to suggest important changes to the Proposed Rule to protect the wellbeing of our constituents and our communities. In addition to NYC Health + Hospitals, the New York City Mayor’s Office of Immigrant Affairs (“MOIA”), Department of Social Services (“DSS”), Department of Health and Mental Hygiene (“DOHMH”), New York City Housing Authority (“NYCHA”), and Department of Housing Preservation and Development (“HPD”) contributed to this comment.

Due to the confusion and fear generated by the 2019 Public Charge Final Rule (“2019 Final Rule”) and its implementation, the City has invested significant resources to help New Yorkers understand public charge and access the benefits and services they need and are lawfully eligible for. On October 22, 2021, the City submitted a detailed comment in response to the DHS’s Advance Notice of Public Rulemaking regarding the Public Charge Ground of Inadmissibility.¹ Our October comment is included as an attachment. Please see the attached for detail on the City’s investments and efforts to combat the chilling effect created by the 2019 Final Rule.

As we collectively recover from the COVID-19 pandemic, the City is deeply committed to ensuring that our recovery is equitable and inclusive of all New Yorkers, including immigrants. The City is also keenly aware that despite the rescission of the 2019 Final Rule and a new Presidential administration, a chilling effect continues to deter immigrant New Yorkers from seeking the care and support they need. The Center for Migration Studies recently published a report based on interviews of NYC based community organizations, care workers, immigrants and city agencies and found that an ongoing chilling effect persists in NYC’s immigrant communities.² The report found that immigrants’ concerns about immigration status, family

¹ <https://www.federalregister.gov/documents/2021/08/23/2021-17837/public-charge-ground-of-inadmissibility>

² Center for Migration Studies Report (Jan. 2022) available at: <https://cmsny.org/wp-content/uploads/2022/02/Immigrants-Use-of-New-York-City-Programs-Services-and-Benefits-CMS-Report-013122-FINAL.pdf>

separation, detention, and deportation often dissuade them from accessing benefits and city services for themselves and their loved ones. As the City continues its efforts to mitigate against the chilling effect and bring down access barriers, we submit this comment to highlight some important changes to the Proposed Rule that would enhance the City's ability to provide and ensure access to much needed benefits and prioritize public health and safety for all New Yorkers.

No Public Benefits Should Be Considered

The City is pleased to find that the Proposed Rule does not consider most non-cash benefits and the Proposed Rule contains critical clarifications of its scope and applicability. However, it remains the City's position that none of the public benefits referenced are relevant to assessing whether an individual is likely to become a public charge. As a preliminary matter, use of public benefits is not a mandated statutory factor which must be considered when determining whether an individual is a public charge. *See* 8 USCS § 1182(a)(4)(B). Second, receipt of public benefits is not dispositive of whether an individual is likely to become a public charge. For example, cash assistance is meant to be temporary in nature, often includes work requirements, and is meant to promote self-sufficiency. Thus, one's past or current receipt of cash assistance should not be highly predictive of whether an individual is or will likely become a public charge. Furthermore, while the City is pleased to find that the Proposed Rule includes clear language that disability alone is insufficient to determine whether someone is likely to become a public charge, the inclusion of long-term institutionalization at government expense and Supplemental Security Income (SSI), which provides monthly income payments to individuals who are elderly, blind, or have a disability, will most certainly have a disproportionate negative impact on people with disabilities.

Based on the City's extensive experience combatting the chilling effect of public charge rulemaking, we are deeply concerned that the inclusion of public benefits in the public charge assessment will continue to force many New Yorkers to make an unconscionable choice between their immigration status or applying for necessary benefits that would allow them to support themselves or obtain essential healthcare. We are concerned that having any type of Medicaid coverage included, even if only for institutional long-term care, will cause confusion and could result in a chilling effect in accessing critical health care programs. Similarly, confusion over which cash assistance benefits are considered, or which benefits will be considered cash assistance under the Proposed Rule, will deter individuals from seeking the help they need. Additionally, inclusion of public benefits at all continues to compound and complicate the administration of the City's own benefits programs. For example, many individuals are simultaneously enrolled in cash assistance and other local or state programs, such as HIV/AIDS Services Administration (HASA) which can provide rental assistance to eligible New Yorkers living with HIV/AIDS. The Proposed Rule risks deterring individuals from receiving both benefits out of confusion and lack of clarity.

We fear that inclusion of public benefits will continue to deter mostly low-income immigrants of color from accessing the support they need and are lawfully entitled to receive, thus frustrating the City's efforts to both recover from the COVID-19 pandemic and repair

underlying historical racial inequities. In order to protect public health, promote an equitable recovery, and address longstanding inequities, it is a priority for the City to ensure that immigrant New Yorkers feel empowered to access the help they need without fear of repercussions on their immigration status. Removing receipt of public benefits from a public charge analysis would alleviate this fear, and thereby enhance the City's efforts to encourage immigrants to seek the benefits they need. As such, we strongly urge DHS to avoid perpetuating historical, institutionalized racism and bias against low-income immigrants of color by removing consideration of public benefits from the Proposed Rule.

Local and State Programs Should Not Be Considered

While we maintain our position that none of the public benefits referenced should be considered in the public charge analysis, the City would like to specifically address why inclusion of state and local cash assistance, and long-term care coverage, are particularly problematic for localities. To the extent receipt of any public benefits remains a consideration, state and local benefits should at minimum not be included. As local government, we believe DHS' inclusion of our benefits programs in the public charge analysis fosters a chilling effect on immigrants accessing those programs, and therefore frustrates our ability to meet the dynamic and changing needs of our constituents. It also undermines our local legislative and policy decisions to include noncitizens in relief and public benefits programs where the federal government does not. The City wants immigrant New Yorkers to access and utilize our benefits programs and has pioneered programs, such as NYC Care³ and IDNYC⁴, which are accessible to New Yorkers no matter their immigration status. We made this policy choice because we know it improves public health and safety when more New Yorkers have access to health care and identification. Including local and state cash assistance programs undermines our policy choice to design broadly inclusive programs because it deters immigrants from accessing them. During the pandemic, both the City and the state created new programs that provided cash assistance to noncitizen New Yorkers excluded from federal relief.⁵

Most recently, the state expanded Medicaid eligibility to noncitizens 65 years of age and older who did not previously qualify because of immigration status. This program is fully state-funded and includes eligibility for long-term care. It is expected to go into effect in 2023, potentially coinciding with the finalization of this proposed rule and adding to the existing confusion created by inclusion of certain forms of Medicaid in previous versions of public charge rules and field guidance. Inclusion of any form of Medicaid in this rule would be a deterrent to enrollment and diminish the value of this essential new program for older New Yorkers before it begins. We reaffirm that the solution to this problem is to exclude all benefits from public charge determinations, and at a minimum to exclude local and state programs such as state-funded Medicaid for older immigrants.

³ <https://www.nyccare.nyc/>

⁴ <https://www1.nyc.gov/site/idnyc/index.page>

⁵ See, e.g., New York State Excluded Workers Fund <https://dol.ny.gov/EWF>; NYC COVID-19 Immigrant Emergency Relief Fund <https://www1.nyc.gov/site/fund/initiatives/covid-19-immigrant-emergency-relief-fund.page>

The inclusion of state and local programs would cause confusion and a chilling effect on public benefits access due to an inevitable lack of clarity from DHS on precisely which programs meet the Proposed Rule’s definition of cash assistance. It would be unrealistic to expect USCIS to develop clear guidance on the public charge implications of every single state and local cash assistance program across the country, let alone keep such a guidance current as the development of such programs continuously evolve. As a result, both localities and our constituents would be unable to decisively predict whether a particular assistance program would be considered by USCIS to constitute “cash assistance” within the meaning of the Proposed Rule. While the Proposed Rule explains some of what may not be considered cash assistance, the text of the regulation does not. Under the limitations set forth under the preamble⁶, certain locally- or state-run programs may arguably or even likely fall outside the scope of the Proposed Rule’s definition of cash assistance, but the City and its constituents cannot be certain. This uncertainty has consequences for the City and its constituents, and may also lead to administrative burdens on USCIS. For example, in response to constituent and stakeholder inquiries, the City sought clarifications from DHS related to whether the federally-funded Pandemic Electronic Benefit Transfer (P-EBT) and Emergency Rental Assistance Program (ERAP) would be considered in DHS’ public charge analysis. Under the Proposed Rule, this confusion would recur and could dissuade immigrants from accepting benefits to which they are entitled and even pursuing a more permanent immigration status

In light of the ambiguity that results from including state and local benefits in the public charge test, the City would be hindered from issuing clear messaging to our constituents on whether a particular city program might fall under the Proposed Rule’s definition of cash assistance. Having to do so will only compound the chilling effect and create additional barriers and mistrust of government. This is particularly untenable as we recover from a devastating health and financial crisis that has hit Black, brown, and immigrant communities the hardest. As we recover from the pandemic and seek to emphasize equity, the City cannot afford New Yorkers feeling discouraged from receiving the help they need.

DHS and USCIS Should Develop Clear Communications and Conduct Outreach on Implications of the Rule

Finally, the City recommends that USCIS develop clear multilingual guidance and conduct outreach to combat the ongoing chilling effect created by the 2019 Final Rule. Pursuant to President Biden’s Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans⁷, federal agencies should be assessing the public health impacts of public charge and developing clear messaging on the implications of the rule. As such, the City asks DHS and USCIS to help mitigate the ongoing chilling effect created by the 2019 Final Rule with clear, plain language, multilingual guidance. Guidance should also be accompanied by meaningful outreach and education to ensure that benefits-granting agencies and immigrant communities and their loved ones are empowered with

⁶ See 87 FR 10612-3

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>

correct knowledge. Specifically, federal agencies should develop clear guidance on which public benefits are considered under the Proposed Rule as well as which immigration statuses and applications would be subject to public charge determinations. The chilling effect that the City saw extended to New Yorkers who were not in fact implicated by the 2019 Final Rule, but nevertheless, out of fear and confusion, needlessly avoided or withdrew from public benefits which they were legally entitled to receive. This is an unjust and unfair outcome that directly undermines not only our efforts as a City to build trust between immigrant communities and government but also harms public health.

In addition to developing its own guidance, resources, and communications channels, DHS should establish a fund for organizations that are trusted in their communities to support vital outreach and education. New York City has a history of successfully enrolling city residents in safety-net programs such as NYC Care and working to limit the impact of the aforementioned chilling effect by providing technical and financial support to community organizations that are trusted messengers of complex information. DHS should enhance these efforts by supporting community organizations in New York and across the country to undertake and expand upon such efforts.