December 19, 2025

Submitted via www.regulations.gov

Kristi Noem, Secretary, Department of Homeland Security
Washington, D.C. 20528

Re: DHS Docket No. USCIS-2025-0304, U.S. Citizenship and Immigration Services

These comments are submitted by Mark Greenberg and Tara Watson. Mark Greenberg is a Scholar in Residence at the Brookings Institution. Tara Watson is the Director of Brookings' Center for Economic Security and Opportunity. The comments reflect the views of the authors and do not represent an institutional viewpoint of the Brookings Institution.

We are submitting these comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM), published at 90 Fed. Reg. 52168 (November 19, 2025). The NPRM proposes to substantially repeal current public charge regulations and indicates that the Department of Homeland Security (DHS) would proceed instead through subregulatory guidance in making determinations of whether adjustments of status should be denied on the basis that individuals are likely to become a public charge.

We believe that there is no need to revise current public charge regulations. However, if DHS wishes to make changes, the NPRM's approach of repealing current regulations rather than making specific revisions to them is poor public policy and will raise significant legal concerns. Moreover, while the NPRM is not always consistent in its language, the approach that DHS apparently intends to take, in which any means-tested benefits could be considered in determinations based on the subjective judgment of officials, is both unwise and fraught with legal concerns.

As an alternative, we recommend that if DHS wishes to revise current regulations, DHS should initiate a new NPRM process specifically identifying any revisions DHS considers preferable to the current regulations, but ensuring that revised regulations clearly state: which public benefits may be considered in the public charge determination process in a manner consistent with historical understandings of public charge; the extent of usage that

may be relevant; that only benefits received by the applicant consistent with the 2022 regulations or after implementation of revised regulations will be considered; and that determinations will be made applying consistent standards rather than based on the subjective determination of officials.

Public charge criteria should be clear to officials and individuals seeking adjustment of status and not based on the subjective judgment of individual officers.

8 U.S.C. §1182(a)(4)(A) provides that "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C. §1182(a)(4)(B) specifies a set of factors that must be considered in the determination (age; health; family status; assets, resources, and financial status; and education and skills) and provides that an affidavit of support may be considered.

The receipt of public benefits is not specifically listed in statute, but it has long been recognized that prior or current receipt of at least certain public benefits may be relevant to determining if an individual is likely at any point to become a public charge. Currently applicable regulations, at 8 C.F.R. §§212.21 et seq., articulate a standard for which public benefits will be considered and under what circumstances, in a manner consistent with longstanding prior guidance.

In proposing to substantially repeal the 2022 regulation, DHS appears to be saying that because a public charge determination should be based on the totality of the circumstances, DHS should not specify by regulation, and perhaps will not specify at all, which public benefits might be considered, what extent of usage might be considered, and even whether or when benefits received by persons other than the applicant might be considered. Instead, the NPRM appears to envision that all such determinations will be based on the subjective judgment of the official making a public charge determination. While the NPRM notes DHS' intent to develop appropriate policy and interpretative tools consistent with past precedential decisions, the NPRM repeatedly references the role of individual subjective judgment. See 90 Fed. Reg. at 52174, 52183, 52188.

The NPRM misstates the statutory requirement when it states that "Indeed, because the statute requires the officer to determine inadmissibility in his or her opinion, the officer may, in his or her discretion, determine what factors other than the statutory minimum factors are relevant to any individual case." 90 Fed. Reg. 52181. 8 U.S.C. §1182(a)(4)(A) clearly does not say that public charge determinations should be based on the subjective opinion of each individual officer, it says that such determinations should be based on the

opinion of the Attorney General (after transfer of authorities, the Secretary of DHS). Since these are decisions of the Secretary, it follows that to prevent arbitrary and capricious decision-making, the decisions must be made consistent with guidance that ensures that the same set of facts will lead to the same results in decision-making. If the Secretary believes the standards articulated in the 2022 regulations should be revised, DHS should initiate rulemaking to revise those standards, providing for public notice and comment under the Administrative Procedure Act (APA). Simply saying that there will be guidance at some later point would, at best, leave a gap of an unspecified period of time in which there would be an unacceptably high risk of arbitrary decision-making.

As to which benefits will be considered in public charge determinations, the NPRM sometimes refers to means-tested public benefits, but it does not do so consistently, sometimes just referring to public benefits or public resources. And, it leaves unclear whether officials would be allowed to consider any means-tested benefit or only certain ones, and what weight would be given to extent of use, reasons for use, likelihood of future use, and use by family or household members.

It is fundamental that if officials are to determine if someone is likely to become a public charge, they need to know what constitutes being a public charge, but the NPRM is conspicuously silent on this point. It is also fundamental that if individuals are to be denied adjustment of status on the basis of being likely to become a public charge, they should be able to know what it means to be a public charge, so that they can take steps to avoid taking any action that might be viewed as being a public charge or being likely to become one. Yet the approach envisioned by the NPRM would provide no guidance to individuals and family members to help them guide their conduct.

Further, the NPRM proposes to remove an important protection against arbitrary and capricious decision-making. Current regulations, at 8 C.F.R. §212.22(c) expressly provide that "*Denial***.** Every written denial decision issued by USCIS based on the totality of the circumstances set forth in paragraph (b) of this section will reflect consideration of each of the factors outlined in paragraph (a) of this section and specifically articulate the reasons for the officer's determination." DHS proposes to eliminate this requirement, saying it is not needed because current regulations require that USCIS "explain in writing the specific reasons for a denial." *See* 8 C.F.R. §103.3(a)(1)(i). 90 Fed. Reg. 52190-91. But, a requirement to explain specific reasons is clearly less than a requirement to reflect consideration of each statutory factor and specifically articulate the reasons for the determination. Eliminating the current requirement eliminates a key safeguard against conclusory denials.

.

The NPRM either seeks to deter or is indifferent to the consequences of deterring eligible citizens and non-citizens from receiving public benefits. Such deterrence is not a valid policy goal and the NPRM wrongly fails to weight the negative consequences of such deterrence.

The NPRM asserts that the 2022 rule imposes a "straightjacket" on officials' ability to make public charge determinations consistent with "Congress's express national policy on welfare and immigration enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996." 90 Fed. Reg. 52169. But the NPRM never explains why the approach taken is consistent with "express national policy" in PRWORA. The 1996 law imposed a set of requirements for when particular categories of immigrants were and were not eligible for federal public benefits. We are aware of no support for the contention that Congressional intent was to deter benefit usage by citizens or immigrants who are eligible for those benefits under the terms specified by Congress.

There is an extensive literature recognizing that when immigrants and their family members are uncertain about the possibility of negative consequences from receipt of public benefits, they may disenroll or choose not to enroll in such benefits, and may disenroll or choose not to enroll eligible citizen children. Indeed, DHS acknowledges a set of key studies about the potential for chilling effects in its discussion of the estimated effects on transfer payments of the approach taken in the NPRM. See text beginning at 90 Fed. Reg. 52208. Drawing from these studies, DHS estimates an annual reduction of $8,965,218,469 in federal and state transfer payments that would be attributable to disenrollment or non-participation in Medicaid, the Children's Health Insurance Program the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families Program, and federal Rental Assistance. 90 Fed. Reg. 52220. The NPRM expressly notes that "the transfers estimated in this analysis relate predominantly to enrollment decisions made by those who are not subject to the public charge ground of inadmissibility." 90 Fed. Reg. 52208.

This estimated reduction in transfer payments may be an underestimate, both because one could reasonably expect that a very vague policy such as this one will have even greater effects than were seen previously, and because the NPRM envisions considering benefits beyond the listed ones. However, even if the $9 billion figure is used, the NPRM does not explicitly address whether such a result would be a positive or negative one. If DHS considers it a negative consequence, DHS should be able to explain why the envisioned positive consequences of the regulatory approach outweigh these negative consequences. If DHS considers this reduction in program participation by individuals and their families to be a positive consequence of the envisioned approach, DHS should say so, and explicitly

discuss why it would be a positive development to generate such a substantial reduction in participation in health, nutrition, and other benefits programs for members of families with immigrant members. But, it appears arbitrary to recognize the magnitude of these effects on program participation and then decline to address whether they are virtues or demerits of the regulatory approach.

The NPRM does observe in its discussion of indirect effects that reduced access to public benefit programs by eligible individuals, including aliens and U.S. citizens in mixed-status households, may lead to downstream effects on public health, community stability, and resilience, including worse health outcomes, higher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated; Increased rates of uncompensated care; Increased poverty, housing instability, reduced productivity, and lower educational attainment. 90 Fed. Reg. 52218. However, the NPRM does not seek to balance these potential effects against the articulated virtues of the rule in considering the appropriateness of the proposed approach. In our view, it would be arbitrary to treat this reduction in benefits participation and corresponding downstream impacts as a virtue of the NPRM approach.

While the NPRM does not adequately consider the negative consequences of the proposed approach, it overstates the potential benefits. It acknowledges that it cannot quantify the benefits, but observes "The removal of overly-restrictive provisions codified in the 2022 Final Rule would allow DHS to more accurately, precisely, and reliably assess public charge inadmissibility, leading to fewer inadmissible aliens entering the United States and, as a result, leading to fewer aliens entering or remaining in the United States who are likely to receive public benefits." 90 Fed. Reg. 52183. In this statement, the NPRM appears to be asserting that any reduction in receipt of public benefits by non-citizens is a positive outcome. That was not the intent of PRWORA, and goes far beyond the statutory directive providing for denial of adjustment of status for persons likely to become a public charge.

The NPRM should be withdrawn.

In conclusion, the NPRM does not provide a justification for repealing current public charge rules, and we do not believe there is such a justification. However, if DHS wishes to make revisions to public charge requirements, it should do so through an NPRM proposing specific revisions and ensuring that public charge requirements are contained in regulations subject to APA notice and comment. The Trump administration provided for notice and comment regulations in 2019, as did the Biden administration in its 2022 rules, and there is no good justification for not following such an approach now.

Thank you for your consideration.

/s/ Mark Greenberg

Mark Greenberg
Scholar in Residence
Brookings Institution
mgreenberg@brookings.edu

/s/ Tara Watson

Tara Watson
Director, Center on Economic Security and Opportunity
Brookings Institution
twatson@brookings.edu