



**October 24, 2019**

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Megan Herndon  
Deputy Director for Legal Affairs  
Visa Services, Bureau of Consular Affairs  
Department of State  
600 19th St NW  
Washington, DC 20006

**RE: Interim Final Rule: Visas: Ineligibility Based on Public Charge Grounds RIN: 1400-AE87**

Dear Ms. Herndon:

Thank you for the opportunity to comment on the Department of State's (DOS)'s interim final rule, "Visas: Ineligibility Based on Public Charge Grounds." Prevention Institute strongly opposes this rule. The rule is unjustified, departs from over a hundred years of law and policy, is not supported by available research, and will make immigrants and citizens in their families afraid to seek critical programs and services. **We urge the Department to withdraw the rule in its entirety, and to ensure that the long-standing principles clarified in the 1999 field guidance and State Department guidance issued at that time remain in effect.**

Last year, our organization submitted comments on a proposed public charge rule from the Department of Homeland Security (DHS) which are also included below for your reference. We understand that the DOS Interim Final Rulemaking is intended to align the Department's standards with those of DHS. Because the DOS rule is intended to mirror the DHS rule, our objections to the DHS rule are relevant and applicable. **We request that the Department read and consider the below comments as part of the administrative record.**

As you are aware, five federal courts have found that the DHS rule violates the Administrative Procedures Act and is contrary to law. Prevention Institute also joined an amicus brief filed as part of the New York and California findings. The district courts in New York, Washington, and Maryland have issued nationwide preliminary injunctions against the DHS rule, while courts in California and Illinois issued geographically-limited injunctions against the rule. DOS should not rely on the enjoined DHS regulation to justify its actions, when multiple courts have found that its interpretation is likely unlawful. So long as the DHS rule is enjoined, the Department's principal justification for issuing the interim final rule fails. Moving forward with implementation would conflict with the Department's stated goal of alignment with DHS.

Withdrawing the interim final rule alone is an insufficient remedy. Any change in policy which differs from the May 1999 public charge Field guidance<sup>1</sup> will result in one policy being applied to applications processed by consular offices abroad and a different policy to applications processed in the U.S. The State Department's abrupt changes to longstanding standards for evaluating public charge in the January 2018 revisions to the Foreign Affairs Manual (FAM) radically redefined the criteria for admissibility to the United States. Whether or not the DHS rule remains enjoined, any departure of the FAM from the principles articulated in the 1999 guidance will cause chaos and confusion in an already complex legal immigration system, and will cause further harm to immigrants and citizens in their families.

We urge the Department of State to withdraw this Interim Final Rule and the January 2018 FAM instructions. Reinstating longstanding public charge policy as articulated in the 1999 guidance will reduce confusion and support the well-being and long-term success of immigrants and their families.

Sincerely,



Sana Chehimi  
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Prevention Institute  
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Direct: 510 681 3534

#### **Original comments submitted from Prevention Institute in opposition of DHS Public Charge changes**

November 9, 2018

Samantha Deshommnes, Chief  
Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

#### **Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds**

I am writing on behalf of Prevention Institute in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. **The proposed rule would severely damage public health by undermining access to**

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<sup>1</sup> Department of Justice, "64 Fed. Reg. 28689," U.S. Government Publishing Office, May 1999, <https://www.gpo.gov/fdsys/granule/FR-1999-05-26/99-13202>



**essential health, nutrition, and housing programs for immigrants and their families. No one should be forced to choose between meeting their basic needs for food, healthcare, and housing, and remaining in the US with their families.** We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect.

Founded in 1997, Prevention Institute is a national public health non-profit that works to advance health, safety, and wellbeing for all communities, with a focus on closing health inequities that exist across race and ethnicity, sex, socioeconomic status, and immigration status. **Public health is rooted in recognizing the interdependence of health, safety, and wellbeing within society: we are only as healthy as the least healthy member of our community, and their vulnerability makes us all more vulnerable.** By driving immigrant families away from essential healthcare, food, and housing assistance, the proposed rule denies this interdependence and would leave the entire country sicker, hungrier, and more impoverished.

**The massive changes under the proposed rule are not justified by any rationale. In fact, the NPRM itself acknowledges that the proposed rule would cause great harm to individuals, families, and communities, although it fails to quantify this harm and therefore largely ignores it.** Public health demands shared responsibility and collective action. In our current political climate, even the threat of a change in policy undermines health and wellbeing. Ever since rumors began circulating around potential changes to public charge, immigrant families have been dropping out of government programs like the Supplemental Nutrition Assistance Program and the Children’s Health Insurance Program in fear of attracting government scrutiny should this rule change go into effect. If the proposed rule is adopted, more families will be driven away from healthcare, food assistance, and other resources that they are legally entitled to access—resources that are critical in supporting health and wellbeing.

The effects of families dropping out of health-supporting programs would be especially severe for children. One in four children in the US have at least one immigrant parent and 12% of US children are immigrants themselves. The proposed rule would harm children’s health by stripping needed resources to support adequate nutrition, stable housing, economic security, and access to healthcare, and by undermining the health, wellbeing, and stability of families. **Children flourish when their families can meet their basic needs for nourishing food, quality healthcare, economic security, and stable housing.** Children whose families receive needed housing assistance are less likely to experience homelessness, move frequently, or live in overcrowded conditions.<sup>i</sup> Children who have regular access to healthcare are less likely to have unmet medical needs, and not only do better in childhood than children who go without health insurance, but also experience better health, educational, and employment outcomes as adults.<sup>ii iii</sup>

**Children suffer when their basic needs are not met and when stress and instability rule their families’ lives.** When parents are penalized for accessing health, nutrition, and housing assistance, children will lose access to these services, harming the health of families and undermining parents’ ability to care for their children. In our home state of California, the California Health Care Foundation estimates<sup>iv</sup> that up to 1.7 million children would lose access to Medicaid or the Children’s Health Insurance Program if this

policy change goes into effect. Persistent stress and adversity can have profound effects on healthy childhood development, interfering with children’s mental and emotional wellbeing, school performance, and physical health. The effects of toxic stress during childhood can last a lifetime.

As an organization committed to advancing the public’s health, we know the proposed rule would hurt immigrant communities and undermine the health, safety, and wellbeing of our entire society. **Everyone deserves a fair and just opportunity to be healthy.** The proposed rule would make us sicker and less resilient as a nation. Prevention Institute strongly urges the Department to immediately withdraw this harmful proposal and instead advance policies that strengthen—rather than undermine—the ability of all communities to thrive.

Thank you for the opportunity to submit comments on the proposed rulemaking. If you have any questions, do not hesitate to contact me using the information listed below.

Sincerely,



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Prevention Institute  
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Direct: 510 681 3534

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<sup>i</sup> Sard B, Rice D. Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods. Washington, DC: Center on Budget and Policy Priorities; 2016.

<sup>ii</sup> O’Brien R, Robertson C. Medicaid and Intergenerational Economic Mobility. [Discussion Paper]. Madison, Wisconsin: University of Wisconsin—Madison, Institute for Research on Poverty; 2015.

<sup>iii</sup> Goodman-Bacon A. The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes. [NBER Working Paper No. 22899]. Cambridge, MA: National Bureau of Economic Research; December 2016. <https://www.nber.org/papers/w22899.pdf>.

<sup>iv</sup> Zallman L, Finnegan K. Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care. California Health Care Foundation. <https://www.chcf.org/publication/changing-public-charge-immigration-rules/>. Published October 23, 2018. Accessed November 8, 2018.