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Submitted via <https://www.regulations.gov/>

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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

Dear Sir/Madam:

These comments are submitted on behalf of the National Housing Law Project (NHLP) in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018 (CIS No. 2499-10; DHS Docket No. USCIS-2010-0012). NHLP's mission is to advance housing justice for poor people and other marginalized communities, including immigrants and their families. The proposed public charge rule would have widespread negative consequences on immigrant families who rely or would rely on housing assistance as a critical lifeline. The proposed rule would jeopardize their housing stability and place them at risk of homelessness, which could negatively impact their employment, education, health, and ability to otherwise be self-sufficient. We urge that the rule be withdrawn in its entirety, and that long-standing immigration policies continue to remain in effect.

The proposed public charge rule is a dramatic shift from decades of immigration policy and, if finalized, will result in a policy that is fundamentally un-American. Human needs do not change based on immigration status. The proposed rule is impractical, dangerous, and will result in thousands of hardworking families forgoing critical, life-saving benefits, including the housing assistance programs covered under the proposed rule. Blaming struggling immigrant families will do nothing to address the nationwide affordable housing crisis; this proposed rule would instead exacerbate the effects of the crisis. The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

This letter is divided into six primary sections. Sections I - III describe how the proposed rule will negatively impact the United States economy, immigrant families, and other vulnerable populations. Section IV addresses the chilling effects of the rule, while Section V delves into the administrative burdens associated with the rule. Finally, Section VI addresses specific questions

raised by DHS in the rule. Attached to this letter is an appendix, which includes many of the sources cited throughout this letter.

I. The Proposed Rule Will Cost the U.S. Economy Billions of Dollars

A. America's economy depends on immigrants.

Immigrants are a critical factor in keeping the United States' economy healthy and growing. Currently, there are more than 27 million foreign-born workers in the U.S. labor market, accounting for about 17% of the total U.S. workforce.¹ Immigrants are more concentrated in labor markets that literally feed and house America—immigrants make up 28% of construction trade workers and upwards of 70% of agricultural workers. If the public charge rule were implemented, there would be a sharp decrease in immigration of low- and moderate-income families to the U.S, resulting in a shortage of workers to fill these critical roles. This would end up costing the U.S. economy billions of dollars a year,² which some analysts project could cost the U.S. economy as much as \$164.4 billion.³

Additionally, immigrants pay a substantial amount in taxes that help to contribute to federal and state services that benefit all Americans. In 2014, immigrants paid an estimated \$223.6 billion in federal taxes.⁴ This includes \$123.7 billion in Social Security tax and \$32.9 billion in Medicare tax.⁵ On the state and local level, immigrants paid \$104.6 billion in taxes.⁶ In California, immigrants pay 28% of the total taxes in the state.⁷ Immigrants also pay nearly a quarter of all taxes in New York and New Jersey.⁸

Immigrants' contributions to the U.S. workforce are critical for the continued health of the U.S. economy. In 2014, immigrants earned a total of \$1.3 trillion in wages—14.2% of all income earned in the United States.⁹ The percentage of income earned is greater than the

¹ U.S. DEPT. LABOR, BUREAU OF LABOR STATISTICS, USDL-18-0786, FOREIGN-BORN WORKERS: LABOR FORCE CHARACTERISTICS—2017 (2018), <https://www.bls.gov/news.release/pdf/forbrn.pdf>.

² NAT'L ASS'N OF HOME BUILDERS, *Immigrant Workers in the Construction Labor Force* (Feb. 3, 2015), <http://www.nahbclassic.org/generic.aspx?genericContentID=241345&channelID=311>; AM. FARM BUREAU FEDERATION, *Economic Impact of Immigration* (February 2014), <https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/economic-impact-of-immigration>.

³ NEW AM. ECON., *Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds* (Oct. 31, 2018), <https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/>.

⁴ NEW AM. ECON., *Taxes & Spending Power*, <https://www.newamericaneconomy.org/issues/taxes-&spending-power> (last visited Dec. 3, 2018).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ IMMIGRATION FORUM, *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power* (Sept. 6, 2018), <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-tax-contributions-and-spending-power/>.

percentage of immigrants in the general population—13.2%.¹⁰ This is because a greater percentage of immigrants are in their working and income-earning years when they arrive in the United States. Given that the American birth rate stands at a thirty-year low and the baby boomer generation is poised to retire imminently, immigrants—who are expected to contribute trillions of dollars over the next 30 to 40 years to the Social Security and Medicare programs¹¹—are vital for the survival of these social programs.

Furthermore, in-depth statistical analysis shows that low-income immigrants and their families make important contributions to the U.S. economy, and that overall, immigration into the United States is a long-term fiscal net positive.¹² The proposed rule will cut into these economic gains by increasing housing instability. Essential immigrant workers, particularly those in areas with high rents, rely on stable housing in order to maintain their employment, contribute to local economies, and help their communities thrive. The proposed rule does not adequately consider these issues, and, therefore, should be withdrawn until DHS studies the extended impact that the rule will have on the U.S. economy.

B. The proposed rule will exacerbate the U.S. housing crisis.

The proposed rule harms immigrants and their families applying for and receiving critical housing and homelessness assistance. As drafted, the rule departs from longstanding immigration policy where use of these critical, life-sustaining programs is not counted against immigrants and their families. The United States is currently mired in an affordable housing crisis.¹³ Nationwide there is a shortage of 7.4 million affordable rental units, and 71% of extremely low income renters are extremely rent burdened,¹⁴ meaning they spend more than 50% of their income on rent and utilities.¹⁵ The public charge rule, which will curtail families' access to essential housing benefits, will exacerbate this crisis, which is only expected to grow in coming years.¹⁶

¹⁰ *Id.*

¹¹ Alexia Fernandez Campbell, *Why Baby Boomers Need Immigrants to Fund Their Retirement*, In 2 Charts, Vox (Oct. 23, 2018), <https://www.vox.com/2018/8/1/17561014/immigration-social-security>.

¹² See PANEL ON ECON. & FISCAL CONSEQUENCES OF IMMIGRATION, THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION (Francine D. Blau & Christopher Mackie, eds., 2017), <https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration>. See also, Jacob L. Vigdor, *Immigration, Housing Markets, and Community Vitality*, CATO J. (2017), <https://www.cato.org/cato-journal/fall-2017/immigration-housing-markets-community-vitality> (noting that “one additional immigrant in a county predicts an 11.6-cent boost to median housing values, in 2010 dollars.”).

¹³ Glenn Thrush, *As Affordable Housing Crisis Grows, HUD Sits on the Sidelines*, N.Y. TIMES (July 27, 2018), <https://www.nytimes.com/2018/07/27/us/politics/hud-affordable-housing-crisis.html>.

¹⁴ NAT'L LOW INCOME HOUSING COALITION, THE GAP: A SHORTAGE OF AFFORDABLE HOMES 2 (MAR. 2017), https://nlihc.org/sites/default/files/Gap-Report_2017.pdf.

¹⁵ *Id.*

¹⁶ JOINT CENTER FOR HOUS. STUDIES OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING (2018), http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf.

What's more, the rule specifically targets low-income immigrants, a population that already faces substantial barriers to housing.¹⁷ Immigrants encounter a variety of impediments to secure housing, such as language and education barriers, prejudice and discrimination, and cultural differences that may deter them from seeking and receiving services.¹⁸ By chilling access to assistance from already at-risk groups, the new public charge rule threatens to plunge those already struggling even deeper into poverty, making their route to a better life nearly impossible.¹⁹

II. The Direct Impact of the Proposed Rule Will Hurt Hundreds of Thousands of Immigrant Families

A. Housing stability is critical to getting families on a pathway to self-sufficiency and leads to better life outcomes.

The proposed rule threatens to undermine the overall well-being of low- and moderate-income immigrants and their families. The proposed rule will steer many immigrants away from applying for critical housing assistance, and those already participating in these programs will feel compelled to give up the lifeline assistance that helps their families avoid homelessness. Immigrant families, faced with the threat of separation, will be forced to disenroll from housing assistance programs under the public charge rule, causing increased rates of homelessness and unstable housing among an already vulnerable population.²⁰ Reduced access to other work supports like healthcare or nutrition will also make it harder for this at-risk population to pay rent or remain in private housing.

This outcome will not only hurt these families while they struggle to find housing in the short term, but will lead to reduced opportunities and increased health problems for these families in the long term.²¹ Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and mental health problems.²² Having safe and stable housing is crucial to a person's good health, their ability to

¹⁷ ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA* (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

¹⁸ *Id.*

¹⁹ Gillian B. White, *Escaping Poverty Requires Almost 20 Years With Nearly Nothing Going Wrong*, ATLANTIC (Apr. 27, 2017), https://www.theatlantic.com/business/archive/2017/04/economic-inequality/524610/?utm_source=fark&utm_medium=website&utm_content=link&ICID=ref_fark.

²⁰ PRATT CTR. FOR CMTY. DEV., *CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO* (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>.

²¹ Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

²² See Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR. ON BUDGET & POLICY PRIORITIES (October 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; see also Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children's Defense Fund* (Jan. 2015),

sustain employment, and overall self-sufficiency. These effects will be particularly prominent in children, many of whom are U.S. citizens, who are part of immigrant families. Research has shown that economic and housing instability negatively impacts children’s cognitive development, leading to poorer life outcomes as adults.²³ Housing instability is directly correlated to decreases in student retention rates and contributes to homeless students’ high suspension rates, school turnover, truancy, and expulsions, limiting students’ opportunity to obtain the education they need to succeed later in life.²⁴

B. The threshold for monetizable benefits guarantees that noncitizens receiving Section 8 would be penalized; inclusion of housing programs will not reduce their costs.

The proposed threshold for monetizable benefits, including Section 8 assistance, under the rule would penalize applicants “where the cumulative value of one or more of the listed benefits exceeds 15% of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received.”²⁵ In 2018, the FPG for a household of one is \$12,140—meaning that an applicant that receives as little as \$1,822 in monetizable benefits within twelve consecutive months (or approximately \$152 a month) would be penalized under the rule.²⁶ Given the high costs of rental housing in this country—with the average HUD Section 8 payments at approximately \$750 a month²⁷—the rule’s proposed threshold for counting benefits against an applicant all but guarantees that any noncitizen recipient of Section 8 housing benefits would be penalized under the new rule.

DHS estimates a potential savings of \$100 million for the federal government in transfer payments due to forgone enrolment in the housing programs covered by the rule.²⁸ This is

<http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

²³ HEATHER SANDSTROM & SANDRA HUERTA, THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

²⁴ See Mai Abdul Rahman, The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education 55 (Mar. 2014) (Ph.D. dissertation, Howard University), <http://gradworks.umi.com/3639463.pdf> (citations omitted).

²⁵ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,289–290 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

²⁶ See U.S. DEP’T HEALTH & HUMAN SERV., U.S. FEDERAL POVERTY GUIDELINES USED TO DETERMINE FINANCIAL ELIGIBILITY FOR CERTAIN FEDERAL PROGRAMS (Jan. 2018), <https://aspe.hhs.gov/poverty-guidelines>.

²⁷ See HUD, OFFICE OF PD&R, DATASET QUERY TOOL - ASSISTED HOUSING: NATIONAL AND LOCAL, <https://www.huduser.gov/portal/datasets/asstthsg.html> (last visited Dec. 8, 2018). This data can be found by selecting the year “2017 Based on 2010 Census,” at the “U.S. Total” summary level for the “Housing Choice Vouchers” and “Project Based Section 8” programs. The average HUD expenditure for Housing Choice Vouchers was \$753 in 2017, and \$769 for the Project Based Section 8 program in 2017.

²⁸ DEPT. HOMELAND SECURITY, Economic Analysis Supplemental Information for Analysis of Public Benefits Programs, DHS Docket No. USCIS-2010-0012-0031, <https://www.regulations.gov/document?D=USCIS-2010-0012-0031> (last visited Dec. 10, 2018).

highly misleading—the inclusion of these housing benefits will not reduce the amount of money the U.S. currently spends on these programs. The housing programs covered by the rule are not entitlement programs,²⁹ and with almost 3 million families on waiting lists around the country to get into these programs,³⁰ the disenrollment of immigrant families from these programs will not reduce the costs of these programs. If anything, it will increase the burdens and costs of housing providers to administer these programs, which we discuss further in Section Five below. The decision to include these programs with a use threshold that effectively bars any use of these programs by certain immigrant families is an arbitrary policy choice by DHS.

C. Inclusion of non-housing benefits directly threatens housing stability.

The rule’s inclusion of non-housing benefits poses a direct threat to immigrants’ housing stability. Housing subsidies work in tandem with other critical public benefits programs to ensure that working families can attain a stable existence.³¹ Families with access to both housing subsidies and other assistance programs—such as SNAP or WIC—are 72% more likely to have stable housing.³² Recent research has also shown that low-income individuals that have access to affordable health care coverage are 25% less likely to miss paying their rent or mortgage on time.³³ The loss of critical food, health care, and housing assistance would decrease not only women’s economic stability, but also that of their families, including children. In earlier drafts of the proposed rule, DHS itself admitted that the rule “has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.”³⁴ Given that the inclusion of any of the proposed programs to be covered under the rule will lead to dire housing consequences for

²⁹ SETTLEMENT ALLIANCE, *What is the Difference Between Entitlement and Needs-Based Benefits?* (Aug. 17, 2016), <https://www.settlement-alliance.com/news/2016/august/what-is-the-difference-between-entitlement-and-n/>.

³⁰ Alicia Mazzara, CTR. ON BUDGET & POLICY PRIORITIES, *Housing Vouchers Work: Huge Demand, Insufficient funding for Housing Vouchers Means Long Waits* (Apr. 19, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits>.

³¹ Barbara Lipman, *Something’s Gotta Give: Working Families and the Cost of Housing*, CTR. FOR HOUSING POLICY (2005); Helen Levy & Thomas DeLeire, *What Do People Buy When They Don’t Buy Health Insurance and What Does That Say About Why They Are Uninsured?*, NBER WORKING PAPER NO. 9826 (2003).

³² Megan Sandel et al., *Co-enrollment for Child Health: How Receipt and Loss of Food and Housing Subsidies Relate to Housing Security and Statutes for Streamlined, Multi-subsidy Application*, 5 J. APPLIED RESEARCH ON CHILDREN 2 (2014).

³³ See Kriston Capps, *For the Poor, Obamacare Can Reduce Late Rent Payments*, CITYLAB (Dec. 4, 2018), <https://www.citylab.com/equity/2018/12/obamacare-health-insurance-housing-rent-payments/577099/>.

³⁴ DHS, *Draft Notice of Proposed Rule Making: Inadmissibility on Public Charge Grounds*, WASH. POST, (Mar. 28, 2018) <http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/>; Nick Miroff, *Trump Proposal Would Penalize Immigrants Who Use Tax Credits and Other Benefits*, WASH. POST (Mar. 28, 2018), https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?utm_term=.0e2d183f90ef.

immigrants and their families, non-cash programs should not be considered under the rule, and DHS should withdraw the proposed rule in its entirety.

D. The rule fails to consider that immigrants live disproportionately in high cost housing areas and pay more for housing than U.S. citizens.

Immigrants and their families currently face additional barriers in finding affordable housing.³⁵ Compared to U.S. citizens, immigrant families are more likely to have higher housing costs, are more likely to face housing cost burdens, and are more likely to report difficulty paying for housing.³⁶ Many of these additional burdens can be attributed to the fact that immigrants disproportionately live in states with high housing costs.³⁷ For example, California—the state with the largest immigrant population³⁸—has eight of the ten highest rental cost metropolitan counties in the country.³⁹ The proposed rule will add additional burdens to immigrant families that already face significant hurdles in securing affordable housing, placing millions of families at risk of homelessness. The proposed rule does not take into account these unique hardships faced by immigrants in the U.S. housing market, and the rule should be withdrawn until DHS completes an in-depth study of these issues.

E. The proposed rule significantly undervalues homeownership.

The proposed rule considers an immigrant’s assets, including “non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home.”⁴⁰ The use of a bare net equity calculation is inappropriate and unfair in the context of a public charge determination.

For instance, by relying solely on a present net equity valuation, the proposed regulation ignores the well-documented correlation between homeownership and many important indicators of future financial self-sufficiency, including reduced reliance on public benefits. A recent study reviewing the academic literature about the benefits of homeownership, *The*

³⁵ See ROBERT WOOD JOHNSON FOUND., *LIVING IN AMERICA* (Katherine E. Garrett ed., 2006), <https://www.rwjf.org/en/library/research/2006/08/living-in-america.html>.

³⁶ Eileen Diza McConnell, *Who Has Housing Affordability Problems? Disparities in Housing Cost Burden by Race, Nativity and Legal Status in Los Angeles*, 5 *RACE & SOCIAL PROBLEMS* 173, 178 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3784340/pdf/nihms440365.pdf>.

³⁷ See Matt Levin, *Fleeing War-Torn Homes for Crippling Rents—California Housing Costs Creating Harsh Reality for Refugees*, *CALMATTERS* (July 19, 2018), <https://calmatters.org/articles/refugees-housing-costs-california/>.

³⁸ Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CTR.: FACTTANK (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

³⁹ ANDREW AURAND ET AL., NAT’L LOW INCOME HOUSING COALITION, *OUT OF REACH: THE HIGH COST OF HOUSING* 14 (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf.

⁴⁰ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,291 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

Social Benefits of Homeownership and Stable Housing, found that “[h]omeownership boosts the educational performance of children, induces higher participation in civic and volunteering activity, improves health care outcomes, lowers crime rates and lessens welfare dependency.”⁴¹ Other studies have also documented significant decreases in reliance on public benefits programs for homeowners.⁴²

III. The Proposed Rule will Disproportionately Impact Already Vulnerable Populations.

While the proposed rule will be harmful to all immigrants and their families, the rule places already vulnerable populations at a greater disadvantage. Below we explain why the rule would particularly be detrimental for children, seniors, people with disabilities, survivors of domestic violence, people of color, and people with limited-English proficiency.

A. Children

A lack of access to affordable housing remains one of the main barriers to economic stability for many families. Housing costs continue to increase in the United States, yet family income has not kept pace. About 4 million households with children spend more than half of their income on rent, which leaves limited resources for food, utilities, transportation, and other needs.⁴³ The proposed rule would further limit access to housing assistance for families with children. The primary housing assistance programs that serve families with children, Section 8 Housing Choice Vouchers, Section 8 Project Based Rental Assistance and Public Housing are all explicitly included in the rule. Of households currently receiving rental assistance, nearly 40% include children.⁴⁴ Research shows that rental assistance for households with children results in significant positive effects for future child outcomes and family economic security. Housing assistance lifts about a million children out of poverty each year,⁴⁵ and can improve a child’s chances for long-term economic mobility. One study finds that children in households receiving Housing Choice vouchers have higher adult earnings and a lower chance of incarceration.⁴⁶ Housing assistance also improves child health—children of

⁴¹ See LAWRENCE YUN & NADIA EVANGELOU, NAT’L ASS’N REALTORS, SOCIAL BENEFITS OF HOMEOWNERSHIP AND STABLE HOUSING (Dec. 2016), <https://realtoru.edu/wp-content/uploads/2014/06/Homeownership-Stable-Housing.pdf>.

⁴² See, e.g., TWIN CITIES HABITAT FOR HUMANITY, *Impact 2020: Four-Year Strategic Plan to Double Habitat Homeownership Opportunities in the Twin Cities* (2016), <https://minnesota.uli.org/wp-content/uploads/sites/31/2017/12/TCHFH-Impact-2020.pdf>; ATHENS AREA HABITAT FOR HUMANITY, *Surprising Stats on Habitat Homeowners* (Mar. 1, 2017), <https://www.athenshabitat.com/homeowner-statistics-2016/>.

⁴³ CTR. ON BUDGET & POLICY PRIORITIES, *Federal Rental Assistance Fact Sheet* (Mar. 2017), <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-US.pdf>.

⁴⁴ CTR. ON BUDGET & POLICY PRIORITIES, *National and State Housing Fact Sheets & Data*, (Aug. 2017), <https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data>.

⁴⁵ Trudi Renwick & Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. CENSUS BUREAU (Sept. 2017), <https://www.census.gov/content/dam/Census/library/publications/2017/demo/p60-261.pdf>.

⁴⁶ Fredrik Andersson et al., *Childhood Housing and Adult Earnings: A Between-Siblings Analysis of Housing Vouchers and Public Housing*, NAT’L BUREAU OF ECON. RESEARCH WORKING PAPER NO. 22721, (revised Sept. 2018), <http://www.nber.org/papers/w22721>.

families receiving housing assistance had a 35% higher chance of being labeled a “well child,” a 28% lower risk of being seriously underweight, and a 19% lower risk of food insecurity.⁴⁷

At FR 51174, DHS asks about public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. We strongly believe that receipt of benefits as a child should not be taken into account in the public benefits determination as it bears little relationship to their future likelihood of receiving benefits. If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school will decrease future reliance on benefits and will contribute to the future integration of kids who grow up, develop, learn and complete their education and training in the United States. As mentioned throughout this letter, the value of access to public benefits, such as housing assistance, in childhood has been documented repeatedly.

B. Seniors

If this rule were implemented, it would be nearly impossible for older adults to pass the “public charge” test under the new criteria. The number of seniors in the United States who are immigrants is growing. Between 1990 and 2010, the number of immigrants age 65 and older grew from 2.7 million to nearly 5 million. This is due to aging of the immigrant population who arrived during the 1980s and 90s as well as the rise in naturalized citizens who sponsor their parents to immigrate to the U.S. The number of parents of U.S. citizens who have been admitted as legal permanent residents nearly tripled between 1994 and 2017 and now account for almost 15% of all admissions and almost 30% of family-based admissions. Under the proposed rule, many U.S. citizens would no longer be able to welcome their own parents into the country, even after signing a commitment to support their parents. This rule will impact seniors living in immigrant families in the U.S. who will be afraid to access services they need. Over 1.1 million noncitizens age 62 and older live in low- or moderate-income households,⁴⁸ meaning that they would have no “heavily weighed” positive factors to offset the fact that their age is considered a negative factor. The proposal would prevent immigrants from using the programs their tax dollars help support, and prevent access to essential health care, nutritious food, and secure housing. It would increase poverty, hunger, ill health, and unstable housing by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for seniors and their families’ well-being and long-term success.

C. People with Disabilities

⁴⁷ Elizabeth March, *Rx for Hunger: Affordable Housing*, CHILDREN’S HEALTH-WATCH & MEDICAL-LEGAL PARTNERSHIP (Dec. 2009), http://www.vtaffordablehousing.org/documents/resources/435_RxforhungerNEW12_09.pdf.

⁴⁸ MANATT, PUBLIC CHARGE PROPOSED RULE: POTENTIALLY CHILLED POPULATION DATA DASHBOARD (Oct. 11, 2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>.

People with disabilities will also be disproportionately impacted by the inclusion of other programs, including housing and food assistance, in the public charge test. Accessible, affordable housing is critical for many people with disabilities. Having a disability can raise expenses and make it harder for people with disabilities and their caregivers to work, which can strain other necessary items like having enough food. Moreover, almost one in three Medicare beneficiaries enrolled in Part D prescription drug coverage get “Extra Help” with their premiums and copays through the low-income subsidy. This benefit is only available to immigrant seniors who have worked for many years in the U.S. and earned coverage under Medicare. Overall, these are widespread programs that help keep people housed, fed and receiving needed health care – programs that serve as investments in social and individual well-being and future productivity. Immigrants and their families should not be punished for using, or even applying for, a relatively small amount of support from these benefits.

D. Survivors of Domestic and Sexual Violence

While some survivors seeking certain survivor-specific forms of immigration status are exempt from the public charge ground of inadmissibility, such as protections under the Violence Against Women Act and U visas, the exception will not protect many survivors from the detrimental effects of the public charge rule. There are many survivors of domestic violence and sexual assault, along with their family members, who seek status in other immigration categories and who will be harmed as a consequence. Survivors hold all forms of immigration status, from U.S. citizenship to permanent residency to those immigrating through family or employment sponsorship, or as foreign students, temporary workers, or diversity visa applicants.⁴⁹ Even in instances where survivors have secure immigration status and the proposed rule does not directly apply to survivors themselves, the rule may impact their family members seeking admission or permanent residence, such as those sponsored by survivors, or those living in their households. The public charge rule will, therefore, have widespread ramifications in deterring survivors from accessing the services and programs they need to escape and overcome violence. Immigrant families are already withdrawing from assistance programs that support their basic needs due to fear, even though the proposed rule has not taken effect. Not only will the proposed rule, if implemented, impose significant human suffering costs on survivors of domestic violence and sexual assault and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of unmitigated trauma.

Housing assistance is a vital resource for survivors, giving them the security they need to leave abuse without having to fear that doing so will result in homelessness, as well as providing a safe environment to begin their recovery. One of the greatest needs identified by survivors is affordable housing. In a single day, domestic violence programs across the United

⁴⁹ Marry Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL’Y 1 (2000); Edna Erez et al., *Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 FEMINIST CRIMINOLOGY 32 (2009).

States received but were unable to meet nearly 7,500 requests for housing services.⁵⁰ The inability to find and maintain affordable housing puts survivors at extreme risk of homelessness. Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness,⁵¹ and victim service providers, advocates, and allies across the United States report that survivors became homeless as a result of sexual violence.⁵² Sexual assault survivors may be forced to leave their housing or employment as a result of the violence, and become even more at risk for sexual violence as a result.⁵³ Without housing, sexual assault survivors report that other services to address the violence were not likely to be helpful.⁵⁴ For many survivors, the decision to leave abuse hinges on the question, “But where would I go?” Housing assistance provides the answer that survivors need, and creates a pathway to safety—the proposed rule places additional barriers to this path, and will directly harm immigrant survivors of domestic violence.

E. People of Color

The proposed rule will have a disproportionate impact on people of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people who would be potentially deterred from using public assistance by the proposed rule, approximately 90% are people from communities of color (23.2 million). Among people of color potentially chilled by the rule, an estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black people (1.8 million). Among people of color, approximately 33% of Latinos, 17% of Asian American and Pacific Islander, and 4% of Black people would be potentially chilled by the proposed rule.⁵⁵ Given the current administration’s rhetoric on the race and nationalities of potential immigrants,⁵⁶ the

⁵⁰ NAT’L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: 12TH ANNUAL CENSUS REPORT (2018), <https://nnedv.org/content/domestic-violence-counts-12th-annual-census-report/>.

⁵¹ WILDER RESEARCH CTR., HOMELESSNESS IN MINNESOTA 2003 22 (2004); CTR. FOR IMPACT RESEARCH, PATHWAYS TO AND FROM HOMELESSNESS: WOMEN AND CHILDREN IN CHICAGO SHELTERS 3 (2004); NAT’L CTR. ON FAMILY HOMELESSNESS & HEALTH CARE FOR THE HOMELESS CLINICIANS’ NETWORK, SOCIAL SUPPORTS FOR HOMELESS MOTHERS, 14, 26 (2003); INST. FOR CHILDREN & POVERTY, THE HIDDEN MIGRATION: WHY NEW YORK CITY SHELTERS ARE OVERFLOWING WITH FAMILIES (2004); HOMES FOR THE HOMELESS & INST. FOR CHILDREN & POVERTY, TEN CITIES 1997-1998: A SNAPSHOT OF FAMILY HOMELESSNESS ACROSS AMERICA 3 (1998).

⁵² NAT’L SEXUAL VIOLENCE RES. CTR., HOUSING AND SEXUAL VIOLENCE: OVERVIEW OF NATIONAL SURVEY (Jan. 2010), http://www.nsvrc.org/sites/default/files/NSVRC_Publications_Reports_Housing-and-sexual-violence-overview-of-national-survey.pdf.

⁵³ See, e.g., Rebecca M. Loya, *Rape as an Economic Crime: The Impact of Sexual Violence on Survivor’s Employment and Economic Well-being*, 30 J. INTERPERSONAL VIOLENCE 2793 (2014).

⁵⁴ See, e.g., T.K. Logan et al., *Barriers to Services for Rural and Urban Survivors of Rape*, 20 J. INTERPERSONAL VIOLENCE 591 (2005).

⁵⁵ This data can be found at: 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt Health, 9/30/2018. Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

⁵⁶ Julie Hirschfeld Davis et al., *Trump Alarms Lawmakers with Disparaging Words for Haiti and Africa*, N.Y. TIMES (Jan. 11, 2018), <https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html>.

disproportionate impact of the rule on people of color appears to be an intentional consequence, rather than an incidental by-product. This effect (intentional or otherwise) conflicts with the vast body of federal anti-discrimination law and policy, and DHS should withdraw the proposed rule until the agency has addressed this issue.

F. Individuals with limited-English proficiency

DHS proposes, for the first time, to add English proficiency as a weighted factor. The United States has not adopted an official language,⁵⁷ and is a deeply multilingual country, where 63 million people speak a language other than English at home. In fact, there are at least 60 counties in the United States where over 50 percent of the population speaks a language other than English including some of the most heavily populated counties.⁵⁸ The public charge statute does not include English proficiency as a factor to be considered in an individual's assessment and instead refers only to "education and skills," among other factors. The agency offers a limited number of justifications for its proposal to add English proficiency to the list of factors, all of which are without merit. For example, the agency states that those who cannot "speak English may be unable to obtain employment in areas where only English is spoken." There is a significant difference between English proficiency and having no ability to speak the language, which the agency appears to conflate. Many individuals who have limited English proficiency are able to serve important employment roles and meaningfully contribute to the workforce and to civic society.

Furthermore, there are federal civil rights laws protecting limited-English proficient persons from discrimination on the basis of English proficiency. Title VI, 42 U.S.C. § 2000d of the Civil Rights Act prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance, including federal housing assistance. The Supreme Court has held that discrimination on the basis of language or English proficiency is a form of national origin discrimination. In addition, by proposing to consider the potential use of housing assistance, Medicaid, and SNAP in public charge determinations, DHS is making it more difficult for people who are LEP to improve their skills through English language classes. Barriers to education already make access to these courses difficult, but by deterring people from securing health care, food assistance or stable affordable housing, the proposed rule could leave affected populations with little time or ability to focus on skills development.⁵⁹

IV. The Chilling Effects of the Proposed Public Charge Rule Threatens the Health and Housing Stability of Millions of Immigrants

⁵⁷ Harmeet Kaur, *FYI: English Isn't the Official Language of the United States*, CNN (June 15, 2018), <https://www.cnn.com/2018/05/20/us/english-us-official-language-trnd/index.html>.

⁵⁸ 2012-2016 American Community Survey Estimates, Table S1601.

⁵⁹ Ludden, Jennifer, *Barriers Abound for Immigrants Learning English*, NAT'L PUB. RADIO, (Sept. 11, 2007), <https://www.npr.org/templates/story/story.php?storyId=14330106>.

A. The proposed public charge rule places millions of families at risk of homelessness.

The rule will impede access to housing and other subsistence benefits for thousands of immigrant families, and will create a chilling effect that puts millions of immigrants at risk of homelessness. NHP stands united with our partners against the public charge rule—even if the direct housing impact of the rule were reduced to zero—because the public charge rule would force immigrants and their families to forego other forms of critical assistance. This means family budgets will be tightened, directly impacting the amount of money a family has to pay for housing.

The proposed rule would create a chilling effect—making eligible individuals and families afraid to access vital benefit programs, undermining access to critical health, food, and housing supports. It will discourage immigrants from applying for permanent status, a move that has been shown to improve an immigrant’s earnings and ability to remain in housing.⁶⁰ Among those most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible.

Based on benefit enrollment patterns observed in the wake of welfare reform during the 1990s, social scientists report that immigrants’ use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.⁶¹ Even with critical health and nutrition programs, 57% of food-insecure households already face the monthly choice of whether to buy food or pay for housing.⁶² This agonizing choice will become even more fraught for immigrants and their families that forgo critical health and nutrition benefits because of the proposed rule. Furthermore, the current anti-immigrant political climate has heightened the fear of immigration consequences, likely increasing the proposed rule’s chilling effect.⁶³

B. DHS has failed to adequately evaluate the costs of the proposed rule’s chilling effects.

DHS has acknowledged in the proposed rule that there is an anticipated widespread chilling effect. In the Cost-Benefit Analysis portion of the rule,⁶⁴ DHS directly addresses this

⁶⁰ See ROBERT LYNCH & PATRICK OAKFORD, CTR. FOR AM. PROGRESS, THE ECONOMIC EFFECTS OF GRANTING LEGAL STATUS AND CITIZENSHIP TO UNDOCUMENTED IMMIGRANTS 4 (2013), <https://cdn.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-1.pdf>.

⁶¹ JEANNE BATALOVA ET AL., MIGRATION POLICY INST., CHILLING EFFECTS: THE EXPECTED PUBLIC CHARGE RULE AND ITS IMPACT ON LEGAL IMMIGRANT FAMILIES’ PUBLIC BENEFITS USE (2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

⁶² See Nancy S. Weinfeld, et al., *Hunger in America 2014*, FEEDING AM. 1, 161 (2014), http://help.feedingamerica.org/HungerInAmerica/hunger-in-america-2014-full-report.pdf?s_src=W18ADIRECT&s_subsrc=https%3A%2F%2Fwww.feedingamerica.org%2Fhunger-in-america%2Fnews-and-updates%2Fpress-room%2Fpress-releases%2Ffeeding-america-releases-new-hunger-in-america-findings.html&_ga=2.115867333.279617246.1541010561-1038797410.1541010561

⁶³ BATALOVA, *supra* note 61.

⁶⁴ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,266 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

issue—but frames it as a positive, only accounting for allegedly “non-monetized” consequences such as increased emergency room use, worse health outcomes for pregnant women and children, and housing instability.⁶⁵ Experts estimate that the proposed rule would impact a total of 41.1 million noncitizens and their family members currently living in the United States (12.7% of the total U.S. population).⁶⁶ DHS has failed to adequately consider the broader economic and social impacts of the chilling effect of the proposed rule, and should withdraw the rule until the agency conducts a more in-depth analysis on these issues.

In the proposed rule at FR 51173, DHS asks about unenumerated benefits—including whether additional programs should explicitly be counted—and whether use of other benefits should be counted in the totality of circumstances. We strongly oppose adding any additional programs to the list of counted programs, or in any way considering the use of non-listed programs in the totality of circumstances test. No additional programs should be considered in the public charge determination. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider and will harm millions of immigrant families. The addition of any more programs would increase this harm to individuals, families, and communities.

C. The proposed rule runs counter to U.S. policy priorities on preventing and responding to homelessness and poverty.

The proposed rule is in direct conflict with federal policy priorities of ending homelessness and federal mandates for states to provide certain assistance and programs to everyone. For example, the U.S. Interagency Council on Homelessness (USICH) has prioritized ending and preventing homelessness among families with children, regardless of immigration status.⁶⁷ USICH’s mission is to affirmatively remove barriers to housing access, all while acknowledging that “communities that are diverse—in their demographics, in their needs, in their geographic characteristics, in their progress to date, in their resources, in their infrastructure, in their housing markets, and in many other ways.”⁶⁸ The proposed rule directly contradicts this policy goal by erecting additional barriers to housing access.

Furthermore, in passing the 1996 PRWORA, Congress took into consideration that many state and local governments had legitimate interests in providing public services to immigrant

⁶⁵ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,270 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

⁶⁶ MANATT, PUBLIC CHARGE PROPOSED RULE: POTENTIALLY CHILLED POPULATION DASHBOARD (Oct. 11, 2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

⁶⁷ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018), https://www.usich.gov/resources/uploads/asset_library/Summary_of_Essential_Elements_of_the_Plan.pdf; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOME, TOGETHER: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 6 (2018), https://www.usich.gov/resources/uploads/asset_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf.

⁶⁸ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SUMMARY OF ESSENTIAL ELEMENTS OF THE PLAN 2 (July 2018).

communities.⁶⁹ Despite PRWORA’s five-year ban on immigrants being able to use federal public assistance programs, States are still allowed to provide funding to cover qualified and non-qualified immigrants. Additional legislation has also allowed States to provide benefits to “illegal aliens” through state laws that affirmatively provide eligibility for “illegal aliens.”⁷⁰ Upon the passage of these federal laws, Congress was aware that state and local governments believed it was in their best interest to address poverty by providing certain social programs to all individuals residing in their communities. The proposed DHS rule also fails to consider the purpose and goals of federal, state, and local agencies that strive to provide access and care to individuals in their communities.

V. DHS Does Not Adequately Address the Administrative Burdens Created by the Proposed Rule

A. Housing providers, landlords, and state and local benefits agencies will be significantly burdened by the rule.

The rule’s impact will not be limited to immigrants and their families. Public housing agencies and other affordable housing providers have already begun to receive questions from tenants fearful about the implications of the public charge rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies. They will also have to update forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance. This is an administrative cost that has been placed on owners and property managers that is completely unaccounted for in the rule.

Furthermore, the rule would generate a tremendous workload for housing providers that will need to provide immigrants with documentation regarding their history of benefit receipt. The draft form I-944, Declaration of Self-Sufficiency, instructions provided with the NPRM direct individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of “a letter, notice, certification, or other agency documents” that contain information about the exact amount and dates of benefits received.⁷¹ This will create a huge administrative cost for affordable housing providers, many of which are not equipped financially nor have the capacity to respond to these queries.

Additionally, housing providers are anticipating that the chilling effect of this rule will cause many eligible immigrant families to forgo housing assistance, leading to tenant turnover in their assisted units. This turnover poses significant administrative costs for housing providers,

⁶⁹ Claire R. Thomas & Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform*, 31 GEO. IMMIGR. L.J. 197 (2017).

⁷⁰ Seth M. Stodder & Nicolle Sciarra Rippeon, *State and Local Governments and Immigration Laws*, URB. LAW., (2009) (quoting 8 U.S.C. § 1621(d)).

⁷¹ DEP’T HOMELAND SEC., FORM I-944, INSTRUCTIONS FOR DECLARATION OF SELF-SUFFICIENCY (2018), <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>.

and will undermine state efforts to streamline enrollment processes between public assistance programs. Again, these costs and burdens on housing providers are not addressed in the rule. DHS should partner with the Department of Housing and Urban Development to perform a comprehensive study on the impact the public charge rule will have on housing providers and local housing markets more generally, and should withdraw the proposed rule until they have sufficiently studied these issues.

VI. Other Questions Raised by DHS

Valuation of Section 8 as monetizable benefit. At FR 51218, DHS invites comments on a potential alternative methodology under which the agency would assign value to the covered Section 8 programs using HUD rules. Any formula that discourages or prevents immigrants and their families from accessing and maintaining affordable housing in a meaningful way is extremely problematic. Therefore, we object to any formulation by DHS that would compromise an individual's or family's housing stability and, therefore, their ability to maintain stable employment, obtain quality education, and achieve better health outcomes.

Credit scores. At FR 51189, DHS invites comments on how to use credit scores. Credit scores aren't meant as a judge of character or admissibility and should not be used as part of the "public charge" determination. Neither credit reports nor credit scores were designed to provide information on whether a consumer is likely to rely on public benefits or on the character of the individual.⁷² DHS offers no evidence to support its claim that a low credit score is an indication of lack of future self-sufficiency. A bad credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.⁷³ Moreover, credit scores do not take into consideration rent payments, typically a family's largest recurring expense. Using credit reports and credit scores to determine public charge status is also inappropriate because many immigrants will not even have a credit history for DHS to consider, and studies show that even when immigrants do have credit histories, their credit scores are artificially low.⁷⁴

36-month look-back period. At FR 51200, DHS asks whether 36 months is the right look-back period for considering previous use of public benefits and whether a shorter or longer timeframe would be better. We strongly oppose any arbitrary look-back period for use of public benefit programs. Inclusion of a retrospective test is fundamentally inconsistent with the

⁷² CONSUMER FIN. PROT. BUREAU, DATA POINT: CREDIT INVISIBLES 7 (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models built to predict likelihood relative to other borrowers that consumer will become 90 or more days past due in the following two years).

⁷³ See generally CHI CHI WU, NAT'L CONSUMER LAW CTR., SOLVING THE CREDIT CONUNDRUM: HELPING CONSUMERS' CREDIT RECORDS IMPAIRED BY THE FORECLOSURE CRISIS AND GREAT RECESSION 9-12 (Dec. 2013), www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

⁷⁴ BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON CREDIT SCORING AND ITS EFFECTS ON THE AVAILABILITY AND AFFORDABILITY OF CREDIT AT S-2 (Aug. 2007) ("Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance.").

forward-looking design of the public charge determination as mandated by law. Past use of a government-funded program is not necessarily predictive of future use. If the specific circumstances that led to the use of public benefits no longer apply, the previous use of benefits is irrelevant. The studies cited in the proposed rule that indicate that families who stop receiving cash assistance under TANF frequently continue to receive nutrition and health assistance are irrelevant to this question, as cash assistance is only available to an extremely limited population of families with children, living in deep poverty. These studies provide zero evidence that previous receipt of the newly added benefits is an indicator of future use.

Moreover, numerous studies point to the positive long-term effects of receipt of health, nutrition and housing programs. The proposed rule ignores that public programs are often used as work supports, which empower future self-sufficiency. Using benefits can help individuals and their family members become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant positive factors that contribute to future economic self-sufficiency.

15 percent threshold for monetizable benefits. At FR 51165, DHS seeks input on whether to consider the receipt of designated monetizable public benefits at or below the 15 percent threshold. The proposed rule would penalize people who are, by definition, nearly self-sufficient. If an individual used even the smallest amount of benefits for a relatively short amount of time, they could be blocked from gaining lawful permanent residence in the United States. The proposal defines “public charge” to include anyone who uses more than 15 percent of the poverty line for a household of one in public benefits—just \$5 a day regardless of family size. This absolute standard overlooks the extent to which the person is supporting themselves. For example, a family of four that earns \$43,925 annually in private income but receives just \$2.50 per day per person in monetizable public benefits would be receiving just 8.6 percent of their income from the government programs, meaning that they are 91.4 percent self-sufficient.⁷⁵ Yet the rule would still consider the receipt of assistance as a heavily weighed negative factor in the public charge determination.

Income thresholds. DHS proposes to treat income below 125 percent of the federal poverty guidelines (FPG, often referred to as the federal poverty level or FPL) for the applicable household size as a negative factor. Conversely, DHS proposes that income above 250 percent of the FPG be required to be counted as a heavily weighed positive factor. At FR 51187, DHS invites comments on the 125 percent of FPG threshold. We strongly oppose the use of these arbitrary and unreasonable thresholds. There is no statutory basis for either threshold, and the statement that 125 percent of the FPG has long served as a “touchpoint” for public charge inadmissibility determinations is deeply misleading. The cited statute refers to the income threshold for sponsors who are required to submit an affidavit of support, not to the immigrant subject to the public charge determination, and the Department provides no justification for why this threshold is appropriate. Even less justification is offered for the 250 percent of FPG

⁷⁵ David Bier, *New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient*, CATO INST. (Sept. 24, 2018), <https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>.

threshold. At footnote 583, DHS admits that the differences in receipt of non-cash benefits between noncitizens living below 125 percent of FPG and those living either between 125 and 250 percent of the FPG or between 250 and 400 percent of the FPG was not statistically significant.

Setting these standards goes well beyond reasonable interpretation of the law and is in fact an attempt to achieve by regulation a change to the immigration policy of the U.S. that the Administration has sought but that would require Congressional action.⁷⁶ A standard of 250 percent of the FPL is nearly \$63,000 a year for a family of four -- more than the median household income in the U.S.⁷⁷ A single individual who works full-time year round -- who does not miss a single day of work due to illness or inclement weather-- but is paid the federal minimum wage would fail to achieve the 125 percent of FPG threshold. This is clearly not the person that Congress envisioned when they directed DHS to deny permanent status to those at risk of becoming a public charge.

The combination of these thresholds, which are based on household size, with the proposed rule's expansive definition of household, will have the perverse effect of discouraging people from supporting family members. For example, if a couple with one child who has income just over the 250 percent of poverty threshold for a family of 3, takes in a brother who is temporarily unemployed and does not charge rent, they will become a household of four and no longer qualify for the heavily weighed positive factor.

Effective date of rule. At FR 51174, DHS asks about whether the effective date of the rule should be delayed in order to help “public benefit granting agencies” adjust systems. Implementation of the proposed rule would create new challenges and impose a tremendous burden on state and local agencies that administer public benefit programs. The proposal should simply not be implemented at all, but if it is, implementation should be delayed for as long as possible.

Children's Health Insurance Program (CHIP). At FR 51174, DHS specifically requests comment on whether the Children's Health Insurance Program (CHIP) should be included in a public charge determination. We believe the benefits of excluding CHIP outweigh their inclusion in a public charge determination. CHIP is a program for working families who earn too much to be eligible for Medicaid without a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the “public charge” definition, would exacerbate the problems with this rule by extending its reach further to exclude moderate income working families – and applicants likely to earn a moderate income at some point in the future. Including CHIP in a public charge determination would likely lead to many eligible children

⁷⁶ See Raise Act, S.354, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/354>; WHITE HOUSE, *Fact Sheet: President Donald J. Trump Backs RAISE Act* (Aug. 2, 2017) (see statements of President Donald J. Trump included in fact sheet), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>.

⁷⁷ KAYLA FONTENOT, ET AL., U.S. DEP'T. OF COMMERCE, *INCOME AND POVERTY IN THE UNITED STATES: 2017* (Sep. 2017) <https://www.census.gov/library/publications/2018/demo/p60-263.html>.

foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments.

Nearly 9 million children across the U.S. depend on CHIP for their health care. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination. In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent. Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."⁷⁸

We are also concerned that DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs the agency proposes to consider in a public charge determination and that noncitizen participation is relatively low.⁷⁹ The question of which programs to include should not at all consider government expenditures. Whether or not there is a large government expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge. A public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act, and not a backdoor way to try to reduce government expenditures on programs duly enacted by Congress.

For the aforementioned reasons, the National Housing Law Project strongly opposes the proposed public charge rule as unnecessary, unlawful, and fundamentally un-American. We wholly reject the idea that some families are more deserving than others of having a safe place to live, and we condemn this proposal's targeting of low-income immigrant families. No family should have to choose between immigration eligibility and having a roof over their head.

We are all better off as a country if we ensure that all families can access programs that ensure their health and well-being. We urge DHS to immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services, and support they need to remain healthy and productive.

⁷⁸ Lara Shore-Sheppard, *Medicaid and CHIP: Filling in the Gap in Children's Health Insurance Coverage*, ECONOFACT (Jan. 22, 2018), <https://econofact.org/filling-in-the-gap-of-childrens-health-insurance-coverage-medicaid-and-chip>.

⁷⁹ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,174 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).



Thank you for the opportunity to submit comments on the proposed rulemaking. If you have questions, please do not hesitate to contact Karlo Ng at kng@nhlp.org and Arianna Cook-Thajudeen at acooktha@nhlp.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shamus Roller', written in a cursive style.

Shamus Roller
Executive Director