December 4, 2018

Submitted via www.regulations.gov

Samantha Deshommes
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

Dear Sir/Madam:

We are writing on behalf of the Latino/a Law Students Association at Columbia Law School 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 proposed public charge rule published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to immigrants and their families, localities, states, and health care providers and facilities, and DHS provides no justification for why changes are needed. We urge that the rule be withdrawn in its entirety and that long standing principles clarified in the 1999 Field Guidance remain in effect.

The Latino/a Law Students Association at Columbia Law School is a student organization that promotes an understanding of the Latinx community by sponsoring academic, professional, and cultural activities for our members and for Columbia Law School's general student body. We also aim to cultivate an encouraging environment for current and prospective Latinx students through community service, networking events, and support. Our members have a diverse range of interests in the law, especially in promoting immigrants' rights, where many of our members provide pro bono legal services to immigrants, refugees, and asylum seekers through Columbia Law School's Immigrants' Rights Clinic, international and domestic Spring Break pro bono trips, and volunteering with immigrant rights' organization in and around New York City. Most importantly, the majority of our members are either children of immigrants or immigrants themselves.

The proposed rule represents a massive change in current policy. The proposed rule would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence and instead redefining it as anyone who simply receives assistance with health care, nutrition, or housing. Under current policy, a public charge is defined as an immigrant who is "likely to become primarily dependent on the government for subsistence." The proposed rule radically expands the definition to include any immigrant who simply "receives one or more public benefits." This shift drastically increases the scope of who is considered a public charge to not only include people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work.

Additionally, under longstanding guidance, the public charge test considers only cash "welfare" assistance for income maintenance and government funded long-term institutional care – and only when it represents the majority of a person's support. If the rule is finalized, immigration officials could consider a much wider range of government programs in the public charge determination. These programs include most Medicaid programs, housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program, formerly Food Stamps), and even assistance for seniors who have amassed the work history needed to qualify for Medicare and need help paying for prescription drugs.

The rule makes other substantial changes, such as introducing an unprecedented income test and weighing negatively many factors that were previously irrelevant.

These substantial changes are not justified by any rationale. Both research and Congressional actions over the nearly 20 years that the Field Guidance has been in effect provide ample evidence that there is no problem now and no persuasive rationale for change. Rather, this rule appears to be motivated by a desire to change America's system of family-based immigration to grant preference to the wealthy, in ways that the Administration has proposed through legislation but that Congress has rejected. It would create a multitude of ways for individuals to fail the public charge test, and very few ways to overcome it.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for, and receiving certain non-cash benefits and legal immigrants' use of public assistance programs declined significantly.[1]

In response to concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of PRWORA's chilling effects, INS issued an administrative guidance in 1999 which remains in effect today -- clarifying that the public charge test applies only to those "primarily dependent on the government for subsistence", demonstrated by receipt of public cash assistance for "income maintenance", or institutionalization for long-term care at Government expense. The guidance specifically lists non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs NOT to be considered for purposes of public charge.[2] The 1999 NPRM preamble makes clear that it was not seen as changing policy from previous practice, but was issued in response to the need for a "clear definition" so that immigrants can make informed decisions and providers and other interested parties can provide "reliable guidance."[3]

[1] Fix, Michael and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97," (Washington, D.C.: The Urban Institute, 1999).
[2] 64 Fed. Reg. 28689.
[3] Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service on 05/26/1999, 64 Federal Register 28676.

The 1999 guidance is consistent with Congressional intent and case law, has been relied upon by immigrant families for decades, and should continue to be used in interpreting and applying the public charge law. Contrary to the rationale put forward in the proposed rule, in 1996 Congress made changes to program eligibility, not to the public charge determination. Since that time, Congress has made explicit choices to expand eligibility (or permit states to do so) under these programs.

The proposed rule would cause major harm to immigrants and their families. The proposed regulation would make—and has already made—immigrant families afraid to seek programs that support their basic needs. The proposal could prevent immigrants from using the programs their tax dollars help support, preventing access to essential health care, healthy, 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 families' well-being and long-term success.

The fear created by these rules would extend far beyond any individual who may be subject to the "public charge" test, harming entire communities as well as the infrastructure that serves all of us, such as schools, hospitals and clinics. All of these consequences are identified in the proposed rule itself, under costs; a substantial body of evidence demonstrates that they are highly significant and damaging.

The widespread "chilling effect" that causes families to withdraw from benefits due to fear is already evident as a result of rumors of the rule. Community providers have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the leaked draft regulations. Likewise, fear has already been driving immigrant families--who are eligible to receive benefits for themselves or their children--to forgo vital health and nutrition assistance, jeopardizing the health of families and communities alike. This rule may also affect U.S.-citizen children who will be disenrolled by immigrant parents for immigration concerns.[4] Historical evidence from the 1996 PRWORA, which is cited in the NPRM itself, demonstrates that public information alone cannot prevent these damaging consequences, because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically.[5]

The proposed rule would tremendously harm the children of immigrant parents, whether they are immigrants or citizens themselves. 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. Children's well-being is inseparable from their parents' and families' well-being, so help received by parents is central to children's health and well-being in

[4] Jeanne Batalova, Michael Fix, and Mark Greenberg, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," p.23 (June 2018), https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[5] Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

the short- and long-term. Children thrive when their parents can access needed health or mental health care, when their families have enough to eat, and a roof over their heads. Conversely, parents' stress and health challenges impede effective caregiving and can undermine children's development. In states that have chosen to provide Medicaid coverage to all lawfully present pregnant women, the link between parent and child well-being is even more direct: a mother's use of health care during her pregnancy could prevent her from later extending or improving her immigration status.

Although the proposed rule acknowledges that the public charge determination is supposed to be prospective, the proposed criteria used to determine whether or not an applicant will be a public charge are actually retrospective, offered without any evidence of their relevance to the determination of whether an immigrant will become dependent on the government for support in the future. Discouraging families from receiving health, nutrition, housing, or educational supports for their children will only make it harder for them to achieve economic security in the future. It is particularly inhumane to propose denying entry or immigration status to children because they are not yet old enough to work.

The negative factors outlined in the rule ignore the impact of access to public benefits and family support as positive factors in empowering future self-sufficiency. The rule does not recognize that receipt of benefits that cure a significant medical issue or provide people with the opportunity to complete education and training are highly significant positive factors that contribute to future economic self-sufficiency. Without means to become self-sufficient, immigrant families will have greater difficulty integrating into society. Research indicates that immigrants use benefit programs like TANF to further self-sufficiency.[6] There is also a large body of research evidence on the positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid.

The criteria are also arbitrary because:

- They require a separate Affidavit of Self-Sufficiency in addition to the existing Affidavit of Support. This requirement is duplicative and, therefore, an unnecessary burden;
- They mandate automatic denial for anyone who cannot provide an Affidavit of Support, even though the Affidavit of Support is not a critical positive factor;
- The criteria requiring immigration officials to look at bank balances unfairly discriminate against immigrants who are not likely to put their money in a bank account. This may stem from cultural differences or general inaccessibility of financial institutions;
- The proposal also overweighs receipt of one-time immigration fee waivers in predicting if a person will become a public charge;
- They give too much weight to a person's ability to afford private health insurance, as even employees might not have an affordable offer of employer coverage and, thus, rely on health coverage programs;

[6] Bataloya, Fix, and Greenberg, *supra* note 4, at 31.

- They are collectively defined in a negative, unbalanced manner that does not give the average person a fair opportunity to overcome them. In fact, one-third of U.S.-born citizens would have trouble passing this test;[7]
- They purport that the factors enumerated (e.g. low income, lack of employment, and poor credit scores) are separate, when they are in fact related experiences that may feed into each other.

For these reasons, the Department should 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.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact us for further information.

Latino/a Law Students Association
Columbia Law School
Lalsa@law.columbia.edu

[7] Danilo Trisi, "One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants," Center on Budget and Policy Priorities found at: https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for.