



Policy solutions that work for low-income people

December 7, 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:

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment on the proposed public charge regulation published in the Federal Register on October 10, 2018.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for low-income people. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As a national anti-poverty organization, we understand the critical importance of federal programs that support the health and economic well-being of low-income families.

CLASP strongly opposes the Department of Homeland Security's proposed regulation regarding public charge. We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect.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 proposed regulation is unjustified, contradictory to available research, and goes far beyond the agency's authority and Congressional intent. It would make—and has already made—millions of immigrant families afraid to seek programs that support their basic needs. Research indicates that the proposal will deter immigrants and their families from using the programs their tax dollars help support, preventing access to essential health care, healthy, nutritious food and secure housing.¹ The proposal also makes fundamental and deeply damaging changes to the criteria for long-term permanent resident status that will elevate wealth over traditional criteria such as work and family - representing a sharp break with the past and particularly harming immigrants with low-wage jobs, parents caring for children, and their families.

¹ Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018)

<https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>;

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

Both of these massive changes -- discouraging enrollment by immigrants and their families in crucial health and nutrition programs and destabilizing working families through denial of lawful permanent residency -- would increase poverty, hunger, ill health and unstable housing. This rule would exclude low- and moderate-income working families whose contributions are essential to the economy and likely to grow over time and generations. These proposed changes also have profound and damaging consequences for the well-being and long-term success of immigrants and their families, including US citizen children. And beyond immigrants themselves, the proposal harms localities, states, and health care providers and facilities.

We summarize below and explain in more detail in the comments that follow five reasons why the Department should immediately withdraw this proposed regulation. Specifically, the proposal:

- (1) Is a radical change that goes far beyond the agency's authority and far beyond congressional intent;
- (2) Would harm a far larger population and far more seriously than the rule acknowledges, potentially tens of millions of people;
- (3) Would cause permanent harm to children, women, young adults, and families;
- (4) Would significantly harm communities, schools, health care systems, states, localities, businesses and higher education; and
- (5) Would disproportionately harm certain vulnerable and/or legally protected populations.

At the close of our detailed comments, we also address the proposed rule section by section and directly answer the specific questions raised by the Department in the Notice of Proposed Rulemaking.

The proposed rule is a radical change that goes far beyond the agency's authority and far beyond Congressional intent.

The rule makes two massive backdoor changes in current policy. First, under current policy, only cash "welfare" assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the "public charge" test – and only when a person is "primarily dependent" on it. The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence. Instead, the proposed rule would include a wide range of low-wage workers and others with modest incomes who get help paying for health, nutrition, or housing.

Specifically, the proposed rule would consider a much wider range of government programs in the "public charge" determination, many of which typically go to working families: most Medicaid programs (including program options explicitly available to states to support immigrants), housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program) and even assistance for seniors who need help paying for prescription drugs. To give a sense of the scale of the change, if the old criterion were applied to U.S.-born citizens, it would exclude one in twenty people. But the new

criterion would exclude more than six times as many, one in three U.S.-born citizens, or tens of millions of people who get help in any given year paying for health, food, or housing.²

Second, the proposed rule also makes massive changes to existing policy regarding the criteria for lawful permanent residency. Although the proposal claims to maintain a “totality of the circumstances” approach, weighing the person’s age, health, resources, education, family situation, and a sponsor’s affidavit of support, in fact it greatly increases the chances of a negative outcome for ordinary working families without wealth or high incomes, by assigning a negative weight to many factors that are closely correlated (such as having a low income, having a poor credit score, and having requested an immigration fee waiver). . In addition, the proposed rule details how being a child or a senior, having a number of children, or having a treatable medical condition could be held against immigrants seeking a permanent legal status.

A recent study by the Migration Policy Institute gives a sense of the scale here. When recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor and more than 40% had two or more.³ Thus, denials for lawful permanent residency applications would likely skyrocket under the new proposal.

Thus, the effects of the rule would be radical – not a modest change or clearer definition or “improved efficiency” as the summary suggests. The proposed rule would reshape the structure of our legal immigration system and redefine who is ‘worthy’ of being an American – shifting immigration away from working people and the world’s dreamers and strivers and towards those who bring high incomes, and financial assets.

The radical changes embodied in the proposed rule would reverse more than a century of existing law, policy, and practice in interpreting the public charge law, under which the receipt of non-cash benefits has never been the determining factor in deciding whether an individual is likely to become a public charge. For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that assurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.

Congress has had several opportunities to amend the public charge law but each time has instead affirmed the existing administrative and judicial interpretations of the law. This includes an explicit opportunity just after the passage of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), where Congress merely codified the case law interpretation of public charge. When the passage of PRWORA led to confusion about the implications for non-cash benefits, the then-Immigration and Naturalization Service issued an administrative guidance and a notice of proposed rulemaking in 1999 to provide clarity on the existing practice – administrative guidance that remains in effect today. Thus, there is no evidence at all in the record of Congressional or administrative action to support

² Danilo Trisi “One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants” (Washington, DC: CBPP, September 2018), <https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for>.

³ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong “Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration” (Washington, DC: MPI, November 2018), <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration> .

the assertion in this October 2018 proposed rule that the radical new proposals envisioned today follow from PRWORA.

The proposed public charge regulation also conflicts with Congressional actions that recognize the importance of access to health care and nutrition benefits for immigrants and explicitly remove barriers to access, including the 2002 Farm Bill and the 2009 Children’s Health Insurance Program Reauthorization. Thirty-three states have elected to provide Medicaid coverage to lawfully residing children and/or pregnant women without a five-year waiting period.⁴ And the regulation conflicts with Congress’s recognition in PRWORA that Medicaid should be de-linked from cash assistance and its associated time limits, because health coverage under Medicaid is an important support to families pursuing self-sufficiency, not an obstacle.

The proposed regulatory provisions that ostensibly implement the totality of circumstances test for denial are deeply problematic and would substantially disadvantage workers, families, and seniors who are not wealthy. Specifically, the listing of factors and additional criteria is arbitrary, unrelated to the statute, and has the effect of undermining statutory intent by creating a large number of ways to fail and very few ways to pass. The whole approach of the rule – in creating multiple reasons for low-income workers to fail – is directly at odds with the prospective nature of the public charge determination and completely fails to consider the clear evidence that immigrants improve their economic status over time.⁵

The rule is also inconsistent with Congressional intent as expressed through other laws. The treatment of disability as purely a burden is inconsistent with modern understanding of disability and reflects a perspective that Congress has explicitly rejected in multiple statutes, including the Americans with Disabilities Act. The inclusion of English-language proficiency as a factor in the public charge test raises major concerns given the Supreme Court’s finding that discrimination on the basis of language or English proficiency is a form of national origin discrimination.

Finally, the Department’s proposal appears to be driven by the Administration’s racial animus and desire to restrict immigration from certain countries. While not consistent with DHS’ statutory authority, the rule is consistent with the Administration’s consistent public record of explicit hostility to immigrants from Latin America and Africa, and it will have a disproportionately damaging impact on people of color, particularly Latino, AAPI, and Black immigrants.

The proposed rule would harm a far larger population and far more seriously than the text acknowledges, potentially tens of millions of people.

The proposed rule would harm far more people than the estimates it presents acknowledge, based on extensive research that documents and estimates the scale of the “chilling effect” – meaning the effect of making individuals afraid to access programs and undermining access to critical health, food, and other supports for

⁴ National Immigration Law Center, “Medical Assistance Programs for Immigrants in Various States,” <https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf>

⁵ Leighton Ku and Drishti Pillai, The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

eligible immigrants and their families. Among the most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible. Previous research that studied use of benefits by immigrant and mixed status families after the eligibility changes in the 1990s showed decreased enrollment in Medicaid and CHIP even among those who remained eligible.⁶ Based on this research, social scientists project that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.⁷ Research suggests that these estimates from the past (often from the period after PRWORA) may underestimate the chilling effect today, because of the many factors already causing fear and withdrawal from crucial supports among immigrant families.

Our detailed comments include estimates by independent researchers of the effect on the lives of immigrants and their families, using multiple methodologies. All show large impacts. For example, researchers estimate that approximately 25.9 million people would be potentially chilled by the proposed public charge rule, accounting for an estimated 8% of the U.S. population. This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who are family members of at least one noncitizen or are noncitizen themselves, representing approximately 13% of our nation's child population.⁸ In another estimate focused specifically on health impacts, researchers found that up to 4.9 million individuals, including U.S. citizen children, could lose health insurance.⁹ Researchers are also finding that both administrative data and interviews with immigrant families are already showing this effect.¹⁰

⁶ Neeraj Kaushal Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," *Health Services Research*, 40(3), (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>; Michael Fix, Jeffrey Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994-97*, The Urban Institute, 1999, <https://www.urban.org/sites/default/files/publication/69781/408086-Trendsin-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf>; Namratha R. Kandula, et. al, "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants, *Health Services Research*, 39(5), (2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/>; Rachel Benson Gold, *Immigrants and Medicaid After Welfare Reform*, The Guttmacher Institute, 2003), <https://www.guttmacher.org/gpr/2003/05/immigrants-and-medicaid-after-welfare-reform>.

⁷ Jeanne Batalova, Michael Fix, Mark Greenberg *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>. Fix, Trends in Noncitizens' and Citizens' use of Public Benefits; Michael Fix, Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, Urban Institute, 2002, <https://www.urban.org/research/publication/scope-and-impact-welfare-reforms-immigrant-provisions>; Kandula The Unintended Impact of Welfare Reform on Medicaid Enrollment of Eligible Immigrants.

⁸ Manatt Health, *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*, 2018, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

⁹ Manatt Health "Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard" (New York, NY: Manatt Health, October 2018), <https://www.manatt.com/insights/articles/2018/public-charge-rule-potentially-chilled-population>; Samantha Artiga, Rachel Garfield, Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: KFF, October 2018), <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

¹⁰ Allison Bovell-Ammon, Boston Medical Center, Stephanie Ettinger de Cuba, Boston University School of Medicine, Diana Cutts, Hennepin County Medical Center, and Sharon M. Coleman, Boston University School of Public Health, "Trends in food insecurity and SNAP participation among immigrant families of US born young children" (November 2018), <https://apha.confex.com/apha/2018/meetingapp.cgi/Paper/416646>.

A very large body of research, cited in our detailed comments, finds that participation in health, nutrition, housing, and other basic needs programs positively influences children’s and adults’ health in both the short- and long-run as well as educational and economic attainment. Because the rule fails to acknowledge this extensive evidence, it drastically understates the harm that arises from immigrants’ and their families’ withdrawal from benefits.

Finally, the Department fails to adequately evaluate impacts of the proposed rule, including in its discussions of the costs and benefits in both the rule and preamble. It leaves out whole categories of impact to individuals and families, state and local economies, and sectors of the economy and provides neither quantitative nor qualitative estimates of those costs it does mention. For example, it makes no effort to measure the economic impact of the rules on states, despite the considerable evidence of economic and fiscal losses associated with the rule. The Fiscal Policy Institute estimates \$17.5 billion in loss of health care and food supports, \$33.8 billion in potential economic ripple effects of this lost spending, and 230,000 in potential jobs lost because of this reduction in federal spending, under a 35 percent disenrollment scenario.¹¹ As a result of its failure to identify and estimate the impacts of the proposed regulation, and its neglect of the extensive research record, the Department fails to provide the information needed to seriously assess the rule and consistently and substantially underestimates its damage and costs.

The proposed regulation would cause permanent harm to children, women, young adults, and families.

The changes in the proposed rule undercut the foundations that children need to thrive and families to succeed, causing both immediate and long-term harm. Evidence from decades of research using many different methods shows that essential health, nutrition, and housing assistance prepares children to be productive working adults – and that children’s access to these benefits is highly dependent on their parents’ and families’ access and economic stability, not separable.

The damaging consequences of the proposed rule would affect millions of women and children in communities across the United States and produce ripple effects on the health, development, and economic outcomes of generations to come. One in four children in the U.S. – nearly 18 million children – has at least one immigrant parent, and the vast majority (about 88 percent or 16 million) are U.S.-born citizens.¹² Immigrant women comprise 52 percent of the U.S. immigrant population, and many are parents of U.S. citizen children.¹³ Young adults who are immigrants, also crucial to America’s economic future, represent 8 percent of the immigrant population and 10 percent of all young adults.¹⁴ For all these groups, the rule moves policy in exactly the wrong direction both morally and in terms of the nation’s self-interest – towards placing a generation of children and families more at risk instead of investing in their futures.

¹¹ Fiscal Policy Institute “Only Wealthy Immigrants Need Apply: How A Trump Rule’s Chilling Effect Will Harm the U.S.” (New York, NY: FPI, 2018) <http://fiscalpolicy.org/public-charge>.

¹² State Immigration Data Profiles, “United States - Demographics & Social,” Migration Policy institute, n.d., <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

¹³ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” Migration Policy Institute, February 8, 2018, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

¹⁴ CLASP analysis of 2016 American Community Survey Data

The proposed rule would be particularly harmful to the economic security, health, and wellbeing of immigrant women, who make up more than half of the U.S. immigrant population and are already more likely to be economically insecure. On nearly every dimension of the proposed public charge definition, immigrant women would face disadvantages making them far less likely to pass the public charge test: immigrant women—as all women—have lower earnings than men,¹⁵ immigrant women are more likely to be primary caregivers¹⁶ and less likely to be employed;¹⁷ immigrant women are more likely to live in household with children, and therefore, have larger household sizes; and immigrant women are more likely to receive Medicaid or SNAP benefits, compared to their male counterparts.¹⁸ Moreover, the proposed rule’s unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women, because of Medicaid’s importance to women’s health needs throughout their lives. For pregnant immigrant women, research suggests that restricted access to Medicaid and SNAP risks increasing maternal mortality and have serious health implications for their U.S. citizen children. The rule also places barriers in the way of economic success for young adults in immigrant families, particularly by making it harder for young people to access supports like Medicaid and housing subsidies that make it possible for low-income students to complete post-secondary credentials.

The rule will also disproportionately disadvantage immigrant children, immigrant women, and parents of young children in denials of lawful permanent residency as a result of the proposed negative factors. The MPI study of current green card holders highlights the disproportionate impact of the new criteria on women and especially mothers, particularly the negative weight given to neither working nor being in school.¹⁹ Disqualifying mothers in low-income families dramatically disadvantages their children, including citizen children, by destabilizing families, making it harder for a remaining wage-earner to make ends meet, and preventing a mother’s return to the labor force in the future.

Finally, the rule imposes major damage on citizen children, despite saying that they are not included. The rule effectively creates a second class of children who are less likely to access health, nutrition, and housing programs and therefore less likely to achieve their full potential. The transfer payment analysis provided by the Department explicitly depends on citizen children losing benefits – and it sharply underestimates the number of children who we already know are losing access and the likely consequences, as explained earlier. Extensive historical evidence shows that the only way to protect children’s access to health care and nutrition is to make it simple and keep these programs out of the public charge determination – otherwise, parents cannot take the risk of enrolling their families.

¹⁵ Ariel G. Ruiz, Jie Zong, Jeanne Batalova, *Immigrant Women in the United States*, Migration Policy Institute, 2015, <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

¹⁶ D’Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers*, Pew Research Center, 2014, <http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/>.

¹⁷ Ruiz, *Immigrant Women in the United States*.

¹⁸ Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren National Women’s Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 : IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

¹⁹ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, “Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration,” Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

Further, the increased denial of lawful permanent residency to low-income mothers and fathers will also target citizen children, destabilizing families economically and placing parents who do not achieve permanent status at risk of becoming undocumented, with attendant risks to children’s wellbeing. Research consistently points to the importance of immigrant parents’ long-term status for family economic stability and children’s outcomes. Yet with the explicit use of the poverty line and household size as criteria, parents with children are disproportionately targeted for denial by the rule.

The proposed regulation would significantly harm localities, states, businesses, schools and health care providers.

The impacts of the proposed regulation go far beyond individuals and families. Mass disenrollment from SNAP and Medicaid will have devastating ripple effects on states and communities nationwide. The impacts begin with health care providers (for Medicaid) and grocery stores (for SNAP) losing money and spread as struggling families spend less in other areas. In addition, the consequences of mass disenrollment within the health care industry, particularly for safety net hospitals and clinics are dire. The effects of hospital closures include a sharp decrease in access to care and even death rates for all residents of their service areas – that is, far more than immigrant families alone -- as well as economic effects, since hospitals are major employers. The loss of jobs associated with a hospital closure is especially devastating in rural areas, which have smaller populations and a historic reliance on declining industries.²⁰ Moreover, some industries and employers will not locate in an area without a hospital, leaving communities without hospitals unable to attract some employers.²¹

States and localities also suffer when they must deal with the public health and fiscal consequences of choices by immigrants and their families to forego health care. The proposed rule would effectively override state options to extend coverage to all lawfully residing pregnant women and/or children – an option that 33 states have chosen to take up.²² Covering low-income pregnant women and children improves their health and the health of their babies and saves states money. Studies have found that every state dollar spent on prenatal care saves states between \$2.57 and \$3.38 in future medical costs.²³ Disruption and costs to K-12 education are also a major concern for states, localities, businesses, and schools. Inadequate nutrition, a lack of routine medical care, and unstable housing directly affect educational outcomes and the health and wellbeing of students.

In addition to costs related to added health and educational burdens, state and local agencies that administer health, nutrition, and housing programs will also face new administrative challenges. Additions to the workload of state and local agencies include providing documentation of benefit receipt to green card applicants as required

²⁰ Jane Wishner, Patricia Solleveld, et al., *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies*, Kaiser Family Foundation, 2016, www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care.

²¹ Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.

²² National Immigration Law Center, *Health Care Coverage Maps, 2018*, <https://www.nilc.org/issues/health-care/healthcoveragemaps/>.

²³ Robin D. Gorsky, John. P. Colby, “The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire,” *Health Services Research* 23, no. 5 (1989): 583-598, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1065587/>; Institute of Medicine, “Preventing Low Birth Weight,” (1985).

by draft from I-944, responding to consumer inquiries related to the new rule, duplicative work for agencies resulting from families disenrolling and returning to the caseloads, and modifying existing communications and forms related to public charge. Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to streamline enrollment processes between different public assistance programs.

Finally, the proposed changes will have a direct impact on businesses big and small, hurting workers across all wage ranges and damaging state and local governments' ability to support their residents in achieving higher education and workforce policy goals. Particularly for low-wage workers, the proposed changes will destabilize their lives and make it harder for them to sustain steady employment, making it more difficult for employers such as home care agencies or retail businesses to attract and retain workers and potentially disrupting local economies.

The proposed regulation would disproportionately harm certain vulnerable and/or legally protected populations.

In addition to the consequences for people of color, women, children, and young adults already analyzed, the proposed rule is particularly damaging to other specific populations. Our comments address the disproportionate harms caused to victims of domestic violence and sexual abuse, individuals living with disabilities (including individuals living with HIV/ AIDS and children with special health care needs), seniors, and lesbian, gay, bisexual, and transgender immigrants and their families. These groups should be of special concern because they are particularly vulnerable and/or legally protected.

For these reasons and those detailed in the comments that follow, the Department should immediately withdraw its current proposal. The damage on all these dimensions cannot be mitigated merely by narrowing the scope of the rule; it must be withdrawn. We encourage the Department to dedicate its efforts to advancing policies that truly support economic security, self-sufficiency, and a stronger future for the United States by promoting – rather than undermining – the ability of immigrants, their families and children, their communities, and the businesses and nonprofit institutions in those communities to thrive. Similarly, we urge the Department to support rather than undermine the efforts of states to promote healthy and economically secure families and communities including immigrant families and communities – rather than to impose costs and barriers to state budget, policy, and legislative choices.

We present our detailed comments under the five broad themes identified above and refer within the thematic sections to the specific provisions addressed. In Section VI, we offer as section by section analysis of the proposed rule and answer questions posed by the Department. Due to the length of our comments and for your convenience, we have also provided a table of contents.

TABLE OF CONTENTS

I. THE PROPOSED REGULATION IS A RADICAL CHANGE THAT GOES FAR BEYOND THE AGENCY’S AUTHORITY AND FAR BEYOND CONGRESSIONAL INTENT

- a. The Proposed Regulation Is A Radical Expansion of The Public Charge Concept 12
- b. The Proposed Regulation Would Drastically Reshape Our System of Family-Based Immigration 13
- c. The Rule Is Inconsistent with How Public Charge Has Been Historically Understood 14
- d. The Rule Is Inconsistent with Clear Congressional Intent That Recognizes the Importance of Access to Preventive Care and Nutrition Benefits for Immigrants 17
- e. The Department's Re-Definition of The Totality of Circumstances Test Factors and Addition Of "Heavily Weighed" Factors Is Deeply Problematic and Inconsistent with The Plain Meaning of The Statutory Totality of The Circumstances Test 19
- f. The Rule Is Directly at Odds with The Prospective Nature of The Public Charge Determination.... 20
 - i. The Rule Ignores Immigrants’ Economic Mobility Over Time 20
 - ii. The Rule Fails to Consider the Positive Long-Term Effects of Receipt of Health, Nutrition and Housing Programs 21
- g. The Rule Is Inconsistent with Congressional Intent as Expressed Through Other Laws 22
 - i. The Treatment of Disability as Purely A Burden Is Inconsistent with Modern Understanding of Disability 22
 - ii. English Proficiency as A Factor in The Public Charge Test Is A Fundamental Change from Our Historic Commitment to Welcoming and Integrating Immigrants and Stands in Stark Contrast with Civil Rights Laws 22
- h. Public Charge Is A Concept Historically Rooted in Discrimination and The Department's Proposal Appears to Be Driven by The Administration's Racial Animus and Desire to Restrict Immigration from Certain Countries 23

II. THE PROPOSED REGULATION WOULD HARM A FAR LARGER POPULATION AND FAR MORE SERIOUSLY THAN THE RULE ACKNOWLEDGES, POTENTIALLY TENS OF MILLIONS OF PEOPLE

- a. The Rule Would Potentially Deter as Many As 26 Million People in The United States from Accessing Critical Supports 28
- b. Families Are Already Afraid to Access Basic Needs Programs and This Proposal Will Exacerbate Those Fears 30
- c. Access to Health, Nutrition, And Other Key Supports for Working Families Has Positive Effects on Individuals’ Long-Run Economic and Educational Attainment, Which in Turn Contribute to Self-Sufficiency 32
- d. The Department Fails to Adequately Evaluate the Impacts of the Rule 36

III. THE PROPOSED REGULATION WOULD CAUSE PERMANENT HARM TO CHILDREN, WOMEN, YOUNG ADULTS, AND FAMILIES

- a. The Expanded Definition of Public Charge Will Deter Families from Using Public Assistance Programs That Promote Their Health and Economic Security..... 41
 - i. Children Will Face Increased Familial Stress and Hardship and Lose Access to The Programs That Keep Them Healthy, Fed, and Housed 41
 - ii. Women’s Health, Employment, and Economic Success Would Be Disproportionately Harmed by The Proposed Rule 46
 - iii. Young Adults Will Lose Access to Higher Education and Career Pathway Opportunities.... 50

- b. The Proposed Criteria for Public Charge Inadmissibility Determinations Disproportionately Disadvantage Immigrant Children, Immigrant Women and Parents of Young Children 51
- c. The Rule Imposes Major Damage on Citizen Children, Despite Saying That They Are Not Included56
 - i. Research Shows That Immigrant Parents Will Withdraw Their Children from Benefits Out of Fear—Yet the Department Is Dramatically Underestimating the Extent of the “Chilling Effect” For Citizen-Children 57
 - ii. There Is A Clear Correlation Between Parents’ and Children’s Access to Health Care—And the Harm Done to Children When Their Parents Forego Support for Themselves..... 59
 - iii. Research Consistently Points to The Importance of Immigrant Parents’ Long-Term Status for Children’s Outcomes—But Many More Parents May Be Denied Lawful Permanent Residency Under the Proposed Standards 60

IV. THE PROPOSED REGULATION WOULD SIGNIFICANTLY HARM COMMUNITIES, SCHOOLS, HEALTH CARE SYSTEMS, STATES, LOCALITIES, BUSINESSES AND HIGHER EDUCATION

- a. Mass Disenrollment from SNAP and Medicaid Will Have Devastating Economic Ripple Effects on Communities Nationwide 62
- b. Harm to Schools: K-12 62
- c. Harm to Health Care Systems: Immigrant’s Fears About Using Medicaid Will Deprive Financially Vulnerable Safety Net Providers of Vital Revenue..... 64
- d. Harm to States and Localities: The Proposed Rule Would Effectively Override State Options to Extend Coverage 66
- e. Financial Impact on States and Localities: The Proposed Rule Creates Tremendous Administrative Burdens on The Agencies Which Administer Public Benefit Programs 67
- f. Harm to The Business Sector and U.S. Workforce 69
- g. Harm to Higher Education..... 70

V. THE PROPOSED REGULATION WOULD DISPROPORTIONATELY HARM CERTAIN VULNERABLE AND/ OR LEGALLY PROTECTED POPULATIONS

- a. Victims of Domestic Violence and Sexual Assault 74
- b. Individuals Living with Disabilities..... 76
 - i. Individuals Living with HIV/ AIDS..... 77
 - ii. Children with Special Health Care Needs 78
- c. Seniors 79
- d. Lesbian, Gay, Bisexual, and Transgender Immigrants and Their Families 80

VI. SECTION BY SECTION ANALYSIS OF PROPOSED RULE..... 81

VII. APPENDIX I 108

VIII. APPENDIX II *submitted in separate files*

I. **THE PROPOSED REGULATION IS A RADICAL CHANGE THAT GOES FAR BEYOND THE AGENCY'S AUTHORITY AND FAR BEYOND CONGRESSIONAL INTENT**

Shortly after President Trump's inauguration in January 2017, an official within his administration leaked a draft of an Executive Order titled "Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility."²⁴ The Executive Order instructed DHS to "rescind any field guidance" and "propose for notice and comment a rule that provides standards for determining which aliens are inadmissible or deportable on public charge grounds"—i.e., if a non-citizen is "likely to receive" or does receive means-tested "public benefits."²⁵ Although the draft Executive Order was never officially released or signed by President Trump, it is now being implemented through this NPRM. It is against this political backdrop that this administration has now proposed changing the way the public charge ground of inadmissibility has been defined and interpreted for the last three centuries.

a. **The Proposed Regulation Is A Radical Expansion of The Public Charge Concept**

While DHS repeatedly claims that this rule is simply providing "clarification and guidance" regarding existing law, the truth is that it would radically expand the concept of "public charge." The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who is primarily dependent on the government for subsistence, and changing it to mean anyone who receives "financial support from the general public through government funding (i.e. public benefits)."

Under the proposed rule, receiving benefits worth just 15% of the federal poverty level for a household of one in public benefits—just \$5 a day regardless of family size -- would make one a public charge. 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 considered a public charge. This is true even though they would be receiving just 8.6 percent of their income from the government programs, meaning that they are 91.4 percent self-sufficient.²⁶

The proposed rule would also greatly expand the programs considered in a public charge determination. Under current policy, only cash "welfare" assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the "public charge" test. The proposed rule would include a wide range of low-wage workers and others with modest incomes who get help paying for health, nutrition, or housing. Specifically, the proposed rule would consider a much wider range of government programs in the "public charge" determination, many of which typically go to working families: most Medicaid

²⁴ See Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf.

²⁵ See Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), https://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOtaxprograms.pdf.

²⁶ David Bier, *New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient*, The Cato Institute, 2018, <https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>.

programs (including program options explicitly available to states to support immigrants), housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, the Supplemental Nutrition Assistance Program (SNAP), and even assistance for seniors who need help paying for prescription drugs (Medicare Low Income Subsidy).

To give a sense of the scale of the change, if the current standard for receipt of benefits were applied to U.S. born citizens, it would exclude one in twenty people. But the new standards would exclude more than six times as many people -- nearly one in three U.S.-born citizens, or tens of millions of low-and moderate-income people who get help in any given year paying for health, food or housing. And these figures are based only on one year of assistance, while the rule actually proposes to look back over three years.²⁷

In part because of statutory limitations on which lawfully present immigrants are eligible to receive public benefits, immigrants subject to the public charge test are actually far less likely than low-income U.S. born-citizens to receive these benefits.²⁸ As recognized by DHS, the data offered in Table 11 of the proposed rule do not allow distinguishing between individuals subject to the public charge determination and those who are not. However, as discussed in more detail in the following sections, because of the sweep and complexity of the proposed rule, it is likely to deter or "chill" immigrants who are not subject to the public charge test (such as refugees and asylees) as well as citizens with immigrant family members, from receiving these benefits, as well as frighten people away from receiving benefits that are not listed in the proposed rule.

b. The Proposed Regulation Would Drastically Reshape Our System of Family-Based Immigration

The proposed rule also makes massive changes to existing policy regarding the criteria for lawful permanent residency. The proposed rule would reshape the structure of our legal immigration system and redefine who is 'worthy' of being an American— shifting immigration away from working people and the world's dreamers and strivers and towards those who bring high incomes, and financial assets.

Although the proposal claims to maintain a "totality of the circumstances" approach, weighing the person's age, health, resources, education, family situation, and a sponsor's affidavit of support, in fact it greatly increases the chances of a negative outcome for ordinary working families without wealth or high incomes, by assigning a negative weight to many factors that are closely correlated such as having a low-income, having a poor credit score, and having requested an immigration fee waiver. In addition, the proposed rule details how being a child or a senior, having a number of children, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. The rule also indicates a preference for immigrants who speak English, which would mark a fundamental change from our nation's historic commitment to welcoming and integrating immigrants over time. Because this rule targets family-based immigration, it will also have a disproportionate impact on people of color.

²⁷ Danilo Trisi. Center on Budget and Policy Priorities. One-Third of U.S.-Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants. September 27, 2018, <https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for>.

²⁸ Leighton Ku and Brian Buen. Cato institute. Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens. March 4, 2013, <https://www.cato.org/publications/economic-development-bulletin/poor-immigrants-use-public-benefits-lower-rate-poor>.

A recent study by the Migration Policy Institute gives a sense of the scale here, finding that when recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor under the proposed rule and more than 40% would have two or more negative factors. Just 39 percent of green card applicants subject to a public charge test in 2017 had incomes at or above 250% of the federal poverty level - the one "heavily weighed" negative factor in the proposed rule.²⁹ While the proposed rule is unclear about how exactly this new test would be applied, it is likely that denials for applications for permanent residency would skyrocket. Moreover, there is a risk that the public charge standard will be inconsistently applied -- and could be applied in a discriminatory manner.

c. The Rule Is Inconsistent with How Public Charge Has Been Historically Understood

The proposed rule would reverse more than a century of existing law, policy, and practice in interpreting the public charge law. When the concept of public charge was first created, the current system of public benefits that support working families did not exist. A public charge was understood to refer to a person who fell completely dependent on public facilities, such as poor houses, hospitals, and asylums for the mentally ill, for support.

The first federal immigration laws excluded "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge"³⁰ -- but this did not include people who were simply impoverished. This is evidenced by Emma Lazarus' famous poem, written the following year, and subsequently attached to the Statue of Liberty, which boldly invited the world to send us "your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore."

As our system of public benefits developed in the 20th century, there has never been an expectation that individuals who received support for health care, food or housing would be considered to be "public charges." For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that reassurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.³¹

Congress has had several opportunities to amend the public charge law but has only affirmed the existing administrative and judicial interpretations of the law. For example, in 1986, Congress enacted a "special rule" for overcoming the public charge exclusion as part of the legalization program "if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance."³² The implementing regulation published in 1989 defined "public cash assistance" as "income or needs-based monetary assistance" including programs like SSI, but specifically excluding food stamps, public housing, or other non-cash benefits including medical assistance programs such as Medicaid.³³ This special rule and its implementing

²⁹ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

³⁰ An Act to Regulate Immigration, 22 Stat. 214 (1882), <https://www.loc.gov/law/help/statutes-at-large/47th-congress/session-1/c47s1ch376.pdf>.

³¹ U.S. Citizenship and Immigration services, "Public Charge," n.d. <https://www.uscis.gov/greencard/public-charge>.

³² INA §245A(d)(2)(B)(iii), <https://www.uscis.gov/ilink/docView/INT/HTML/INT/0-0-0-65/0-0-0-7121.html>. IRCA also created a waiver of the public charge exclusion for applicants who were aged, blind, or disabled (and might be in need of long-term institutional care), INA §245A(d)(2)(B)(ii)(IV).

³³ See 8 CFR §245a.1(i): <https://www.gpo.gov/fdsys/granule/CFR-2017-title8-vol1/CFR-2017-title8-vol1-part245a>; there was a

regulation is consistent with the case law on public charge.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited eligibility for “federal public benefits” to “qualified immigrants” and limited eligibility of many lawful permanent residents for “means-tested public benefits” during their first five years or longer in the U.S., but Congress did not amend the public charge law to change what types of programs should be considered. Instead, that same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress merely codified the case law interpretation of public charge by adding the “totality of circumstances” test to consider the applicant’s age, health, family status, assets, resources, financial status, education, and skills to the statute. Congress also made the affidavits of support legally enforceable contracts. Accordingly, since 1996, having such an affidavit of support generally has been sufficient to overcome any concerns about public charge.

Memoranda from the Department of State and INS interpreting the statutory changes following IIRIRA are also illustrative. The following convey the agencies’ analysis and application of the public charge ground shortly after passage of IIRIRA:

- “If there is a sufficient Affidavit of Support and the applicant appears to be able to support him/herself and dependents, a public charge finding may not be appropriate notwithstanding the petitioner’s reliance on public assistance.”³⁴
- “Except for the new requirements concerning the enforceable affidavit of support, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has not altered the standards used to determine the likelihood of an alien to become a public charge nor has it significantly changed the criteria to be considered in determining such a likelihood.”³⁵

In the preamble to the proposed rule at 83 FR 51118, DHS states that “the primary benefit of the proposed rule would be to help ensure that aliens who apply for admission to the United States, seek extension of stay or change of status, or apply for adjustment of status are self-sufficient, *i.e.*, do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations.” However, the mere statement of a goal for legislation does not mean that Congress has given DHS the authority to do anything it chooses in pursuit of this goal. In fact, the statutory citation given here, to 8 USC 1601(2) is to language added by PRWORA -- legislation in which Congress chose to restrict the eligibility of certain immigrants for benefits and did not make any changes to the public charge statute. Moreover, as discussed below, Congress subsequently made further legislative changes that expanded access to these programs for some groups of immigrants.

In the preamble at 83 FR 51123, DHS states that “within this administrative and legislative context, DHS’s view of self-sufficiency is that aliens subject to the public charge ground of inadmissibility must rely on their own capabilities and secure financial support, including from family members and sponsors, rather than seek and

similar regulatory interpretation for special agricultural workers, 8 C.F.R. §210.3(e)(4).

³⁴ Department of State, “I-864 Affidavit of Support Update No. One – Public Charge Issues,” UNCLAS STATE 228862 (Dec. 1997), <http://www.americanlaw.com/affidavitrule3.html>.

³⁵ Immigration and Naturalization Service, Office of Programs, “Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits” (Dec. 16, 1997), <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/act.html>.

receive public benefits to meet their needs." This incorrectly suggests that the proposed regulation is a simple codification of current practice, rather than a radical change that is driven by this Administration's agenda of reducing family-based immigration and cutting access to public benefits.

Nonetheless, 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. 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 chilling effects from the 1996 law, INS issued administrative guidance in 1999 and a notice of proposed rulemaking clarifying the definition of public charge as primarily dependent on the government for subsistence – as demonstrated by the receipt of cash assistance benefits, and/or government-supported long-term institutional care. It specifically **excluded** non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs to be considered for purposes of public charge.³⁶

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.”³⁷ INS proposed to define “public charge” to mean an individual “who is likely to become ... primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.” This definition was consistent with the advice provided by federal benefit-granting agencies, including the Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration. Each concurred that “receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government” because “non-cash benefits generally provide supplementary support ... to low-income working families to sustain and improve their ability to remain self-sufficient.”

In publishing the 1999 proposed rule and the Field Guidance, INS also explained the logic behind the current policy. INS expressly took “into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.”³⁸ INS also gave several reasons for deciding to adopt the definition of public charge in both the 1999 proposed rule and the Field Guidance. INS observed that non-cash benefits “serve important public interests,” “are by their nature supplemental” and participation in such non-cash programs is “not evidence of poverty or dependence.”³⁹ INS also recognized that benefits are “increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting

³⁶ 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>.

³⁷ Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service on 05/26/1999, 64 Federal Register 28676, <https://www.federalregister.gov/agencies/immigration-and-naturalization-service>.

³⁸ 64 Fed. Reg. at 28,692, U.S. Government Publishing Office, May 26, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13202.htm>.

³⁹ 64 Fed. Reg. at 28,692, U.S. Government Publishing Office, May 26, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13202.htm>.

education, and assisting working poor families in the process of becoming self-sufficient."⁴⁰

In the current NPRM, DHS acknowledges that the Departments of Health and Human Services, Agriculture, and the Social Security Administration agreed on the approach taken in the 1999 rule but claims that the "passage of time" makes these arguments no longer "fully relevant" without actually refuting them. 83 FR 51133. In fact, legislative decisions made since 1999, including the 2002 and 2008 Farm Bills, which made it easier for low-income working families to receive SNAP benefits and the 2010 Patient Protection and Affordable Care Act, which expanded Medicaid access for millions of low-income working families, make the argument from 1999 even more compelling.

At 83 FR 51123, DHS notes that the 1999 Field Guidance and companion proposed rule did not provide additional detail on the mandatory factors included in the totality of circumstances tests and did not explain how to weigh these factors in the public charge inadmissibility determination. DHS states that the 1999 guidance did not "sufficiently" describe these factors but provides no evidence of any problems that have been caused by the 1999 Guidance. In fact, this guidance has remained in effect through both Democratic and Republican administrations and there has not been any indication that INS or DHS have had any difficulties in implementing. 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

d. The Rule Is Inconsistent with Clear Congressional Intent That Recognizes the Importance of Access to Preventive Care and Nutrition Benefits for Immigrants

The proposed public charge regulation undermines Congressional actions that recognize the importance of access to preventive care and nutrition benefits for immigrants. Following the 1996 welfare reform law that overhauled immigrant eligibility for programs and the 1999 INS field guidance, Congress has passed several laws that explicitly loosened or created new eligibility for means tested programs for immigrant populations. Because immigrants and their families will be penalized for using these programs that they are lawfully allowed to use, this proposal effectively ends their eligibility.

- *The Agricultural Research, Extension and Education Reform Act of 1998* [[PL 105-185](#)], restored eligibility to children, seniors, and individuals with disabilities who had been qualified immigrants as of the date of enactment of PRWORA.
- *The 2002 Farm Bill expanded SNAP for immigrant children.* Section 4401 of Farm Security and Rural Investment Act of 2002 restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children, immigrants receiving disability benefits and qualified immigrant adults living in the U.S. for more than five years.

⁴⁰ Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the [Immigration and Naturalization Service](#) on 05/26/1999; 64 Federal Register 28678, U.S. Government Publishing Office, May 26, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm>.

- *The 2009 Children’s Health Insurance Program Reauthorization bill expanded access to Medicaid and CHIP for immigrant women and children.* Section 214 of the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA) gave states a state plan amendment option to cover, with regular federal matching dollars, lawfully residing children and pregnant women on Medicaid and CHIP regardless of their date of entry. As of January 2018, 35 states had taken the option to cover children and 25 states had taken the option to cover pregnant women.⁴¹

Statutory text, congressional debate and contemporary media coverage demonstrate these decisions were an intentional use of legislative power that should not be undermined by a regulation. For example, Newt Gingrich, one of the primary creators of the 1996 law, was quoted in 2002 as saying "I strongly support the president's initiative [to restore SNAP benefits to immigrant children]. In a law that has reduced welfare by more than 50 percent, this is one of the provisions that went too far. In retrospect, it was wrong."⁴²

Families should be able to seek and use the benefits they are eligible for, focused on remaining healthy and productive, without compromising their ability to remain permanently in the United States. Congress has clearly understood this over time, intentionally avoiding and removing barriers to immigrant access to programs like SNAP, CHIP and Medicaid. The administration can’t cite PRWORA’s goal as justification for their changed policy while ignoring subsequent laws which support health and nutrition assistance for immigrants and highlight their effectiveness in promoting self-sufficiency.

In a few places in the rule, DHS recognizes Congressional intent outside of the Immigration and Nationality Act. For example, at 83 FR 51171, DHS explains the exclusion of Medicaid services for children who will be adopted by U.S. citizens, noting that Congress has enacted numerous laws over the last two decades to ensure that such children are not subject to adverse consequences. DHS’ interest in this intent and disregard of other laws that express clear Congressional intent to expand health and nutrition benefits is a clear sign of cherry-picking the legislative history in support of their desired policies.

At 83 FR 51123, DHS states that the proposed rule would remove the "artificial distinction" between cash and non-cash benefits. This distinction is not artificial, but a long-standing part of policy and practice. For example, it is not legal for SNAP recipients to sell their benefits for cash.⁴³ Moreover, the SNAP statute explicitly states that "the value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws."⁴⁴

Similarly, DHS repeatedly claims that the PRWORA concept of self-sufficiency requires that an individual not receive any public support; however, one of the main features of PRWORA was a sharp distinction between cash assistance, which was made time limited and subject to strict work requirements, and Medicaid, which was "de-

⁴¹Kaiser Family Foundation. Medicaid/CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women. January 2018. <https://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴²Robert Pear, "Bush Plan Seeks to Restore Food Stamps for Noncitizens," New York Times, January 10, 2002, <https://www.nytimes.com/2002/01/10/us/bush-plan-seeks-to-restore-food-stamps-for-noncitizens.html>.

⁴³ USDA Food and Nutrition Service, "Fraud," n.d., <https://www.fns.usda.gov/fraud/what-snap-fraud>.

⁴⁴ 7 USC 2017(b), "Benefits not deemed income or resources for certain purposes," <https://www.law.cornell.edu/uscode/text/7/2017>.

linked" from cash assistance. In this law, Congress recognized that health coverage under Medicaid was an important support for families pursuing self-sufficiency, not an obstacle. At 83 FR 51163, DHS states that "certain non-cash benefits, just like cash benefits, provide assistance to those who are not self-sufficient." This is a tautological statement, the Department having arbitrarily defined self-sufficiency based on the absence of receipt of any benefits.

At 83 FR 51164, the regulation justifies the expansion of included programs by stating that "DHS considers the current policy's focus on cash benefits to be insufficiently protective of the public budget, particularly in light of significant public expenditures on non-cash benefits." However, it is inappropriate and outside of DHS's lawful jurisdiction for the Department of Homeland Security to save money by trying to discourage people from utilizing benefits for which Congress has made them eligible. This impermissible goal is reflected throughout the proposed rule; for example, at 83 FR 51165, where DHS explains that the selected programs were identified based on "the Federal government's expenditures."

e. The Department's Re-Definition of The Totality of Circumstances Test Factors and Addition of "Heavily Weighed" Factors Is Deeply Problematic and Inconsistent with The Plain Meaning of The Totality of The Circumstances Test

At 83 FR 51178, DHS correctly describes the totality of circumstances test: "Other than an absent or insufficient required affidavit of support, no single factor or circumstance that Congress mandated DHS to consider, or which DHS may otherwise determine to consider, would determine the outcome of a public charge inadmissibility determination." However, the detailed listing of factors and evidence that will be considered -- and the arbitrary selection of certain factors as "heavily weighed" -- suggests that in practice it would be nearly impossible for immigrants to overcome certain negative factors.

The proposed rule explicitly says that "assets, resources and financial status" together would carry considerable positive weight, since they are the most "tangible" factors to consider. This is not grounded in either Congressional language or previous practice -- the case law examples cited in the proposed rule make clear that historically having prospects of employment and/or a sponsor has been sufficient to overcome previous lack of employment or low income. The listing of multiple highly correlated items such as income below a specific level, receipt of fee waiver, and credit score as separate items further biases the determination against low-income applicants.

The Department's proposal to heavily weigh certain factors is also arbitrary as the statutory language does not provide a basis for weighing some factors more heavily than others. Moreover, the proposed rule does not heavily weight the only factor that is singled out in statute as absolutely essential -- the provision of a valid affidavit of support. As discussed further in our comments that follow, the 125 and 250 percent of poverty thresholds are arbitrary and without statutory basis.

The lack of clarity about how it will be possible to overcome negative factors means that the proposed rule will have a much greater chilling effect -- making immigrants afraid to access public benefits even if those supports would help them thrive and become more stable in the future. For example, the proposed rule gives an example of an immigrant who has received benefits in the past and is now unemployed, but is graduating college and has a pending offer of employment with benefits, and says that "it is possible that in the review of the totality of the circumstances, the alien would not be found likely to become a public charge." A straightforward reading of the

totality of circumstances test is clearly that the circumstances that led to use of benefits are about to change, and that such an individual is not at risk of becoming a public charge. However, the anemic language offered in the proposed rule, that it is "possible" this individual will not be found a public charge, makes it impossible to offer this person assurances that they will not be penalized for having received benefits. Moreover, because having been previously found to be a public charge is itself a heavily weighed negative factor, if rejected, this individual will find it even harder to be approved in the future.

At 83 FR 51123, the preamble states that "DHS's view of self-sufficiency also informs other aspects of this proposal. DHS proposes that immigrants who seek to change their nonimmigrant status or extend their nonimmigrant stay generally should also be required to continue to be self-sufficient and not remain in the United States to avail themselves of any public benefits for which they are eligible, *"even though the public charge inadmissibility determination does not directly apply to them."* In other words, DHS directly admits that they have no statutory basis for this proposal, but simply think it would be a good idea based on their ideological hostility to use of public benefits.

f. The Rule Is Directly at Odds with The Prospective Nature of The Public Charge Determination

i. The Rule Ignores Immigrants' Economic Mobility Over Time

When determining whether an individual is likely to use benefits, immigration officers apply a "totality of circumstances" test by considering a range of factors such as age, education, health, income, and resources. The proposed rule broadens this list, meaning that more individuals seeking to adjust status will face the risk of being denied because of demographic and socioeconomic characteristics the rule considers signs of likely benefit use.

Based on the Migration Policy Institute's study of recent green-card recipients, approximately 69 of recent green card recipients had at least one negative factor, 43 percent had at least two negative factors, and 17 percent had at least three negative factors in the proposed rule. In particular, children, seniors, and individuals from Mexico and Central America are at a higher risk of denial as 45%, 72%, and 60%, respectively, have two or more negative factors. The same researchers found that only 39 percent of recent green card recipients had incomes at or above 250 percent of the poverty level – a heavily weighed positive factor in the proposed rule.⁴⁵ Further, another study by the Center for Migration Studies suggests that a large number and share of working class immigrants would be denied admission and prevented from adjusting to LPR status under the proposed rule.⁴⁶

However, the rule fails to consider evidence that immigrants improve their economic status overtime. Analysis conducted by the Center for Health Policy Research found that immigrants have substantial economic mobility. When immigrants first arrive to the United States, they have less social capital and their job skills and experience may not align perfectly with the American job market. Over time, immigrants' social capital increases and job skills and experience improve, increasing their income to eventually catch up to non-immigrants. Additionally,

⁴⁵ Randy Capps, Mark Greenberg, Michael Fix, Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, MPI2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁴⁶ Donald Kerwin, Robert Warren, Mike Nicholson *Proposed Public Charge Rule Would Significantly Reduce Legal Admissions and Adjustment to Lawful Permanent Resident Status of Working Class Persons*, CMS, 2018 <http://cmsny.org/wp-content/uploads/2018/11/Public-Charge-Report-FINAL.pdf>.

immigrants with low education close the immigrant-native income gap even faster, catching up with similar US-born counterparts within seven years.⁴⁷ The proposed rule completely ignores the upward mobility of immigrants, denying immigrants future opportunities and stalling our nation's progress.

Research also shows that access to lawful permanent residence and citizenship can help lift families out of poverty and create economic prosperity for immigrants and their children.⁴⁸ Lawful status and citizenship can help parents secure better paying jobs, pulling families out of poverty, and reduces the stress associated with living without legal status. These benefits are passed down to children—especially when parents are able to obtain legal status early in their child's life—leading to better educational and workforce outcomes when their children reach adulthood.⁴⁹

ii. The Rule Fails to Consider the Positive Long-Term Effects of Receipt of Health, Nutrition and Housing Programs

Case law regarding public charge includes numerous examples where even decades-long past receipt of cash benefits did not result in a public charge finding because of the "totality of circumstances" test was used in the applicant's favor, including showing changes in employment history and other life circumstances. The proposed rule ignores the fact that public programs are often used as work supports which contribute to the long-term self-sufficiency the Department purports to promote.

At 83 FR 51174, DHS recognizes that by statute, the public charge test is required to be prospective -- to look at *the likelihood of future use* of benefits. It acknowledges that on face value, the proposed policy is not prospective "DHS understands that its proposed definition of public charge may suggest that DHS would automatically find an alien who is *currently* receiving public benefits, as defined in this proposed rule, to be inadmissible as likely to become a public charge." It then attempts to salvage its proposal by saying "DHS does not propose to establish a *per se* policy whereby an alien is likely at any time to become a public charge if the alien is receiving public benefits at the time of the application for a visa, admission, or adjustment of status." However, by heavily weighing previous receipt of public benefits and providing no heavily weighed prospective factors, this is to all extents and purposes what DHS is proposing to do.

Numerous studies point to the positive long-term effects of receipt of health, nutrition and housing programs.⁵⁰ These studies are further discussed in the sections below. The proposed rule ignores the fact that public programs are often used as work supports which empower future self-sufficiency. Using benefits can help

⁴⁷ Leighton Ku and Drishti Pillai, *The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities* (November 15, 2018). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285546.

⁴⁸ Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, "The Social Mobility of Immigrants and Their Children," Migration Policy Institute, June 2009, <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>.

⁴⁹ Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, "Mexican American Mobility," Stanford Center on Poverty and Inequality, April 2013, https://inequality.stanford.edu/sites/default/files/media/media/working_papers/keister_agius_vallejo_borelli_mexican-american-mobility.pdf.

⁵⁰ Tazra Mitchell and Arloc Sherman, "Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find," Center on Budget and Policy Priorities, July 17, 2017, <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over>.

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.

g. The Rule Is Inconsistent with Congressional Intent as Expressed Through Other Laws

i. The Treatment of Disability as Purely a Burden Is Inconsistent with Modern Understanding of Disability

The proposed rule reflects a harmful, outdated and inaccurate prejudice that people with disabilities are not contributors to society – a perspective that Congress has explicitly rejected in multiple statutes, including the Americans with Disabilities Act. Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the “sole factor,” in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and “archaic attitudes” about disabilities that the Rehabilitation Act was meant to overcome.⁵¹ By treating immigrants with disabilities as public charges, the proposed rule would reinforce prejudice and negative attitudes towards all people with disabilities, viewing them as burdens on society. This punitive and prejudicial approach would reverse decades of disability discrimination law and add to the stigma and discrimination experienced by all individuals who have a disability.

ii. English Proficiency as A Factor in The Public Charge Test Is A Fundamental Change from Our Historic Commitment to Welcoming and Integrating Immigrants and Stands In Stark Contrast With Civil Rights Laws

The language requirement in the proposed rule stands in stark contrast to Federal Civil Rights Laws prohibiting discrimination on the basis of English proficiency. This is not a country with a national language. There is no law that allows the government to give preference to those who speak English over those who are limited English proficient (LEP). In contrast to this proposal, there are clear federal civil rights laws protecting LEP 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. Title VII, 42 U.S.C. § 2000e of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The Supreme Court has held that discrimination on the basis of language or English proficiency is a form of national origin discrimination. Executive Order 13166 provides that all persons who are Limited English Proficient (LEP) should have meaningful access to federally conducted and federally funded programs and activities and directs federal agencies to ensure they are in compliance.

The English proficiency proposal is not supported by the statute or the agency’s Justification. 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

⁵¹ School Bd. of Nassau Cty. v. Arline, 480 U.S. 273, 279 (1987).

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 here. Many individuals who have limited English proficiency are able to serve important employment roles. Second, the U.S. 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.⁵² In 2016, approximately 49 percent (21.3 million) of the 43.4 million immigrants ages 5 and older were LEP.⁵³ There are a myriad of areas where a person who speaks a language other than English can meaningfully contribute to the workforce and to civic society.

h. Public Charge Is A Concept Historically Rooted in Discrimination, And the Department's Proposal Appears to Be Driven by The Administration's Racial Animus And Desire To Restrict Immigration From Certain Countries

The history of public charge is steeped in a deep-rooted prejudice against those who comprise a racial, ethnic, or social underclass. The first public charge laws in this country were adopted by the states. For example, New York State passed a law in 1847 that prohibited the landing of “any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of emigrating families, and who . . . are likely to become permanently a public charge.”⁵⁴ The motivation for these laws derived from both financial concerns and cultural prejudice against the Catholic Irish who often arrived in the United States without the financial resources to support themselves.⁵⁵ The first federal statute precluding the admission of immigrants based on potential public charge was passed by the 47th Congress and signed into law on August 3, 1882,⁵⁶ three months after it had passed the Chinese Exclusion Act.⁵⁷ After the establishment of immigration quotas based on national origin in the 1920s, the public charge provision was used to exclude European Jews seeking to escape Nazi genocide.⁵⁸

Today’s proposal targets individuals who come from less developed countries, possess modest skills and

⁵² U.S. Census Bureau, *2012-2016 American Community Survey Estimates, Table S1601*.

⁵³ Migration Policy Institute, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, 2018, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

⁵⁴ Annual Reports of the Commissioners of Emigration of the State of New York: From the Organization of Commission, May 5, 1847, to 1860, Inclusive (New York: John F. Trow, 1861), <https://books.google.com/books?id=nVdNAQAAMAAJ&pg=PA184&lpg=PA184&dq=%22any+lunatic,+idiot,+deaf+and+dumb,+blind+or+infirm+persons,+not+members+of+emigrating+families,+and+who,+from+attending+circumstances,+are+likely+to+become+permanently+a+public+charge%22&source=bl&ots=ij-lXsleii&sig=Lyr85eEdyMmz42df37RARAdZrjs&hl=en&sa=X&ved=2ahUKewiNycr-vvzeAhVpp1kKHziODKgQ6AEwAnoECAMQAQ#v=onepage&q=%22any%20lunatic%2C%20idiot%2C%20deaf%20and%20dumb%2C%20blind%20or%20infirm%20persons%2C%20not%20members%20of%20emigrating%20families%2C%20and%20who%2C%20from%20attending%20circumstances%2C%20are%20likely%20to%20become%20permanently%20a%20public%20charge%22&f=false>.

⁵⁵ Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States & the 19th-Century Origins of American Immigration Policy*, Oxford University Press 2017, p. 2., <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780190619213.001.0001/acprof-9780190619213>.

⁵⁶ Immigration Act of August 3, 1882, 22 Stat. 214, “Fees for execution and issuance of passports; persons excused from payment,” August 3, 1882, <https://www.law.cornell.edu/uscode/text/22/214>.

⁵⁷ Immigration Act of May 6, 1882, 22 Stat. 58, https://www.law.cornell.edu/wex/chinese_exclusion_act.

⁵⁸ Barbara Bailin, *The Influence of Anti-Semitism on United States Immigration Policy With respect to German Jews During 1933-1939*, City University of New York 2011, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1261&context=cc_etds_theses.

education, lack English proficiency, and seek primarily low-wage positions in the economy. In footnote 20, DHS notes that "this proposed policy change is consistent with the March 6, 2017 Presidential Memorandum directing DHS to issue new rules, regulations, and/or guidance to enforce laws relating to such grounds of inadmissibility and subsequent compliance." But the proposed rules are not consistent with these laws.

Donald Trump has expressed his support for dramatic changes to family-based immigration, particularly when the immigrants come from certain countries. Since the start of his Presidential bid, Trump has made numerous and frequent statements that explicitly express hostility to immigrants from Latin America, Africa, and the Middle Eastern countries where the majority of people are not white and have low incomes, which are directly relevant to understanding the administration's motivations. Examples include:

- During his first campaign speech, Trump said: "When Mexico sends its people, they're not sending their best. They're sending people that have lots of problems. They're bringing drugs. They're bringing crime. They're rapists."⁵⁹
- In a July 2015 Statement, Trump released a statement against Mexican immigrants, saying: "What can be simpler or more accurately stated? The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists, etc."⁶⁰
- In December 2015, Trump called for a "a total and complete shutdown of Muslims entering the United States," including refusing to readmit Muslim-American citizens who were outside of the country at the time.⁶¹
- On June 2, 2016, President Trump told the Wall Street Journal that a federal judge hearing a case about Trump University was biased because of the judge's Mexican heritage.⁶²
- On January 26, 2017, less than a week after taking office, President Trump issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.
- In June 2017, Trump said 15,000 recent immigrants from Haiti "all have AIDS" and that 40,000 Nigerians, once seeing the United States, would never "go back to their huts" in Africa.⁶³
- On July 26, 2017, President Trump expressed his support for the RAISE Act and promised "to create a new immigration system for America. Instead of today's low-skill system, just a terrible system where anybody comes in."⁶⁴ However, this bill only received support from three Senators, and was never even heard in committee.⁶⁵

⁵⁹ Washington Post Staff, "Full text: Donald Trump announces a presidential bid," The Washington Post, June 16, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.c35512e917ef.

⁶⁰ Hunter Walker, "Donald Trump just released an epic statement raging against Mexican immigrants and 'disease,'" Business Insider, July 6, 2015, <https://www.businessinsider.com/donald-trumps-epic-statement-on-mexico-2015-7#ixzz3fF897EIH>.

⁶¹ Tessa Berenson, "Donald Trump Calls For 'Complete Shutdown' of Muslim Entry to U.S.," Time Magazine, December 7, 2015, <http://time.com/4139476/donald-trump-shutdown-muslim-immigration/>.

⁶² Brent Kendall, "Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'" The Wall Street Journal, June 3, 2016, <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

⁶³ Michael D. Shear & Julie Hirschfeld Davis, "Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda," The New York Times, December 23, 2017, <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

⁶⁴ President Donald J. Trump Backs RAISE Act, The White House, August 2, 2017, <https://www.whitehouse.gov/briefings->

- On January 11, 2018 President Trump complained about “these people from shithole countries” coming to the United States and added that the United States should accept more immigrants from countries like Norway.⁶⁶
- On May 16, 2018, President Trump commented that “[w]e have people coming into the country, or trying to come in. . . . You wouldn't believe how bad these people are. These aren't people, these are animals . . .”⁶⁷
- On October 19, 2018, in response to a question on migrants fleeing violence and grinding poverty in Guatemala, El Salvador and Honduras, the president had these comments: “These are tough, tough people, and I don't want them, and neither does our country.”⁶⁸
- In a rally in Arizona on October 20, 2018 as well as at other campaign stops, President Trump repeated his claim that immigrants from Latin America are “bad hombres.”⁶⁹

In addition to expressing hostility towards immigrants and people of color, President Trump has frequently displayed friendliness with proud racists and white nationalists. For example, he called some of those who marched alongside white supremacists in Charlottesville, Va., last August “very fine people.” After David Duke, the former leader of the Ku Klux Klan, endorsed him, Trump was reluctant to disavow Duke even when asked directly on television.⁷⁰ Trump endorsed and campaigned for Roy Moore, the Alabama Senate candidate who spoke positively about slavery.⁷¹ Trump also pardoned – and praised – Joe Arpaio, the Arizona sheriff sanctioned for racially profiling Latinos and for keeping immigrants in brutal prison conditions.⁷²

It is clear that 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 potentially chilled from seeking services 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).⁷³

[statements/president-donald-j-trump-backs-raise-act/](#).

⁶⁵ S.1720 - RAISE Act, U.S. Congress, August 2, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1720>.

⁶⁶ Josh Dawsey, “Trump derides protections for immigrants from ‘shithole’ countries,” January 12, 2018, The Washington Post, https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.7fc895490993

⁶⁷ Remarks by President Trump at a California Sanctuary State Roundtable, The White House, May 16, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-california-sanctuary-state-roundtable/>.

⁶⁸ Emily Cochrane, Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws, New York Times (October 20, 2018), <https://www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html>.

⁶⁹ Emily Cochrane, Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws, New York Times (October 20, 2018), <https://www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html>.

⁷⁰ Glenn Kessler, “Donald Trump and David Duke: For the record,” The Washington Post, March 1, 2016, https://www.washingtonpost.com/news/fact-checker/wp/2016/03/01/donald-trump-and-david-duke-for-the-record/?utm_term=.7126e49478f7.

⁷¹ German Lopez, “Roy Moore was once again caught making remarks that can be interpreted as okay with slavery,” Vox, December 11, 2017, <https://www.vox.com/identities/2017/12/11/16761348/roy-moore-racism-sexism>.

⁷² Kevin Liptak, Daniella Diaz and Sophie Tatum, “Trump pardons former Sheriff Joe Arpaio,” CNN, August 27, 2017, <https://www.cnn.com/2017/08/25/politics/sheriff-joe-arpaio-donald-trump-pardon/index.html>.

⁷³ 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

The disproportionate impact on communities of color provides additional evidence of the radical effect this rule would have in reshaping the country's population. Not only would it cause disproportionate harm among people of color with unmet health and nutrition needs, it would dramatically reduce the diversity of immigrants entering the US and obtaining green cards, reshaping the demographics of this country for decades to come. According to recent analysis by the Migration Policy Institute, the proposed rule would likely cause a significant shift in the origins of immigrants seeking visas and green cards, away from Mexico and Central America and towards Europe.⁷⁴ This trend would not only reduce the diversity of immigration to the United States, it would disproportionately increase family separation among immigrants of color – and US citizens - already residing in the US.

- ***Impact on Latino Immigrants***

The proposed changes would significantly harm our nation's Latino community and future. Today, the U.S. Hispanic population stands at more than 55 million and approximately one in four (23%) Latinos are non-citizens.⁷⁵ And by 2050, it is projected that nearly one-third of the U.S. workforce will be Latino.⁷⁶ Among Latino children, who account for a quarter of all U.S. children, the majority (52%) have at least one immigrant parent.⁷⁷

Based on analysis by Manatt Health, the proposed rule would have a significant impact on a large share of the Latino community. Of the approximately 25.9 million people potentially impacted by the proposed rule, an estimated 18.3 million Latinos would be potentially chilled by the proposed public charge rule, accounting for an estimated 33% of the entire U.S. Latino population and an estimated 71% of the total potentially impacted population.⁷⁸ For progress to continue in the Latino community and our nation, immigrants should have an opportunity to support the resilience and upward mobility of their families. The proposed changes fail in this respect as Latino families would chill the use of support programs that help families put food on the table, access health care, and afford a roof over their heads because of fear of immigration consequences.

- ***Impact on Asian American and Pacific Islander Immigrants***

The proposed rule would have a dramatic impact on Asian American and Pacific Islander families. Asian Americans

<https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

⁷⁴ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁷⁵ U.S. Census Bureau, American FactFinder: Selected Population Profile in the United States: 2016 American Community Survey 1-Year Estimates, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; and 2017 Current Population Survey, Annual Social and Economic Supplement.

⁷⁶ J. S. Passel & D. Cohn, "U.S. Population Projections: 2005-2050," Pew Research Center (February 2008). Found online at <http://www.pewhispanic.org/2008/02/11/us-population-projections-2005-2050/>.

⁷⁷ Richard Fry and Jeffrey S. Passel "Latino Children: A Majority Are U.S.-Born Offspring of Immigrants" (Washington, DC: Pew Research Center, 2009) <http://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/>.

⁷⁸ 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>.

and Pacific Islanders are among the fastest growing populations in the U.S.,⁷⁹ in large part to changes in U.S. immigration law in the 1960s that finally repealed restrictions on Asian immigration dating back to the Chinese Exclusion Act of 1882. Ironically, the original “public charge” exclusion was enacted in that same year, seeking to restrict Irish immigrants fleeing the potato famine.⁸⁰

In recent years, three out of every ten individuals obtaining permanent residence status are from Asia and Pacific Island nations.⁸¹ Forty percent of the millions of individuals and families waiting in long backlogs for family-based immigration are from Asia and Pacific Island nations.⁸² All of these potential new Americans would be scrutinized under the new proposed rule and many would be deterred from participation in programs that they are eligible for and need to improve their health and well-being and the health and well-being of their families. While there is no evidence that the utilization of any government programs by Asian Americans and Pacific Islanders is higher than other populations, the proposed rule would deter many of these individuals and families from continuing to participate in programs such as Medicaid, SNAP, and government-assisted housing. Progress made since the passage of the ACA, that had partially equalized the disparities in uninsured rates between Whites and Asian Americans and Pacific Islanders through the expansion of Medicaid and establishment of health insurance marketplaces, could easily be wiped out.⁸³ Subgroups that are particularly at risk of poverty, such as Marshallese (41% poverty rate), Burmese (38%), Hmong (26.1%) and Tongans (22.1%), would be particularly likely to be being forced to choose between access to health and nutrition and their ability to keep their family united.⁸⁴

- **Impact on Black Immigrants**

The proposed rule would have a chilling effect on an estimated 1.8 million Black immigrants and their families. Nearly one in ten (7%) of all the people affected by the proposed rule, or one in twenty Black people in the U.S. (4%) would be potentially affected by the rule.⁸⁵ Although there are fewer total Black immigrants than Latinos or Asian Pacific Islanders, Black immigrants made up nearly one-quarter of people who became lawful permanent residents in one year.⁸⁶ In the aftermath of the 1996 Welfare Reform Acts, cuts to public benefits had lasting and

⁷⁹ U.S. Census Bureau, The Asian Population: 2010 (2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf> and U.S. Census Bureau, The Native Hawaiian and Other Pacific Islander Population: 2010 (2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>

⁸⁰ Green E. First, “They Excluded the Irish,” The Atlantic. (February 2, 2017)

<https://www.theatlantic.com/politics/archive/2017/02/trump-poor-immigrants-public-charge/515397>

⁸¹ Department of Homeland Security, Yearbook of Immigration Statistics 2016, <https://www.dhs.gov/immigration-statistics/yearbook/2016>

⁸² Department of State, Annual Report of Immigrant Visa Applicants (2017),

https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf

⁸³ Park et al, “Health Insurance for Asian Americans, Native Hawaiians, and Pacific Islanders Under the Affordable Care Act,” JAMA Internal Medicine. (April 30, 2018). <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2678830?redirect=true>

⁸⁴ American Community Survey 2015 Five Year Estimates, table DP03, U.S. Census Bureau, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

⁸⁵ 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS), U.S. Census Bureau, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>; 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>.

⁸⁶D’Vera Cohn, Neil G. Ruiz, *More than half of new green cards go to people already living in the U.S.*, PEW, July 2,

devastating repercussions on Black people, including Black immigrants.⁸⁷ In the decade after these laws passed, extreme poverty doubled to 1.5 million.⁸⁸ The proposed public charge rule would have a similarly chilling effect on Black immigrants and their families. In addition, like all Black people in America, Black immigrants face employment discrimination. This means that, Black immigrant women and men also earn considerably lower wages than U.S.-born non-Hispanic white women and men.⁸⁹ This makes it more likely that they or their families would benefit from programs that support work by helping them access health care, nutritious food, and stable housing.

II. THE PROPOSED REGULATION WOULD HARM A FAR LARGER POPULATION AND FAR MORE SERIOUSLY THAN THE RULE ACKNOWLEDGES, POTENTIALLY TENS OF MILLIONS OF PEOPLE

The proposed regulation, if implemented, would cause widespread harm by deterring a large number of people from receiving critical public supports. Although many immigrants and members of mixed-status families are not subject to the public charge determination, there is compelling historical evidence that the “chilling effect” will impact a much broader population than those who are directly subject to the determination. Moreover, just the existence of rumors about this proposed rule, combined with fears about immigration enforcement, have already had an impact on program participation.

Similarly, there is an extensive research literature that proves the benefits of these core basic needs programs for recipients, their children, and society as a whole. This rule would worsen health, nutrition, and self-sufficiency. The Department nods to the possibility of these negative effects but fails to quantify them or take them seriously. The Department therefore vastly underestimates the negative impacts of the rule, failing to accurately assess the likely chilling effect on families and individuals, the downstream economic effects, and other costs. Later sections of these comments go into far greater detail on the research showing the harm to specific populations and organizations.

a. The Rule Would Potentially Deter as Many As 26 Million People in The United States from Accessing Critical Supports

The proposed rule would create a chilling effect -- making individuals afraid to access programs and undermining access to critical health, food, and other supports for eligible immigrants and their families. Among the most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible. It is important to note that immigrants and their children have historically faced unique barriers to accessing critical public benefits, including lack of transportation, language

<http://www.pewresearch.org/fact-tank/2017/07/06/more-than-half-of-new-green-cards-go-to-people-already-living-in-the-u-s/>.

⁸⁷ Clarke, V. “Impact of the 1996 Welfare Reform and Illegal Immigration Reform and Immigrant Responsibility Acts on Caribbean Immigrants”, *Journal Of Immigrant & Refugee Services*, 2(3/4), (2004)

https://www.tandfonline.com/doi/abs/10.1300/J191v02n03_10.

⁸⁸ H. Luke Shaefer, Kathryn Edin, *Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs*, University of Michigan and, Harvard University, 2013, <http://npc.umich.edu/publications/u/2013-06-npc-working-paper.pdf><http://npc.umich.edu/publications/u/2013-06-npc-working-paper.pdf>.

⁸⁹ Randy Capps, Kristen McCabe, Michael Fix, “Diverse Streams: African Migration to the United States,” Migration Policy Institute, 2012, <https://www.migrationpolicy.org/research/CBI-african-migration-united-states?pdf=AfricanMigrationUS.pdf>.

barriers, confusion regarding immigrant eligibility rules, and concerns related to becoming a public charge. Research shows that these barriers have already impacted participation rates and that increased immigration enforcement and other anti-immigrant policies further deter immigrants from seeking out benefits that they and/or their children are eligible for.⁹⁰

Previous research that studied use of benefits by immigrant and mixed status families after the eligibility changes in the 1990s showed decreased enrollment in Medicaid and CHIP even among those who remained eligible.⁹¹ Based on this research, social scientists project that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.⁹²

For estimates of potential changes in coverage due to public charge policies, researchers present several scenarios using different disenrollment rates. Using this 25% disenrollment rate as a midrange target, researchers assume a range of disenrollment rates from a low of 15% to a high of 35%. Moreover, it is worth noting that the worst thing that could happen to someone who was ineligible under the 1996 rules who applied for benefits is that they would have their application rejected. By contrast, under the proposed rule, applying for benefits could have permanent negative effects on immigration status.

Approximately 25.9 million people would be potentially chilled by the proposed public charge rule, accounting for an estimated 8% of the U.S. population. This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who are family members of at least one noncitizen or are noncitizen themselves, representing approximately 13% of our nation's child population.⁹³

A large share of the people potentially chilled by the proposed public charge rule reside in five states – California, Florida, Illinois, New York, and Texas – that account for approximately 61% of the total impacted population (15.9 million). Among children potentially chilled, California and Texas account for more than 40% of all children potentially chilled by the rule (3.9 million). Families in other regions of the United States, like those in the Midwest and Northeast, will also be among those potentially impacted. Altogether, approximately 2.8 million Midwesterners and 4.1 million Northeasterners may be potentially chilled by the proposed rule.⁹⁴

According to the Kaiser Family Foundation, an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll, if the proposed rule leads to disenrollment rates between 15 percent and 35 percent.⁹⁵ Further, researchers from the Institute for Community Health report that 700,000 to 1.7 million children in need of medical attention living with a noncitizen adult could be disenrolled from Medicaid/CHIP coverage, if 15 to 35 percent disenrolled. This includes approximately 143,000 to 333,000 children with at least one potentially life-

⁹⁰ Krista M. Perreira, et al., (2012). Barriers to Immigrants' Access to Health and Human Services Programs, U.S. Department of Health and Human Services *ASPE Issue Brief*, <https://aspe.hhs.gov/system/files/pdf/76471/rb.pdf>.

⁹¹ Kaushal, Welfare Reform and Health Insurance of Immigrants; Kandula, The Unintended Impact of Welfare Reform on the; Benson Gold, Immigrants and Medicaid After Welfare Reform.

⁹² Batalova, *Chilling Effects: The Expected Public Charge Rule*. Fix, Trends in Noncitizens' and Citizens' Use of Public Benefits; Fix, *The Scope and Impact of Welfare Reform's Immigrant Provisions*; Kandula, *The Unintended Impact of Welfare Reform*

⁹³ Manatt Health, 2012-2016 5-Year American Community Survey Public Use Microdata Sample..

⁹⁴ Manatt Health, 2012-2016 5-Year American Community Survey Public Use Microdata Sample

⁹⁵ Artiga, Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid.

threatening condition, including asthma, influenza, diabetes, epilepsy, or cancer, 122,000 to 285,000 children on prescribed medications, 102,000 to 238,000 newborns, and 53,000 to 124,000 children with musculoskeletal and rheumatologic conditions, like fractures and joint disorders.⁹⁶ In California alone, the Children’s Partnership estimates that between 269,000 to 628,000 children would lose Medicaid/CHIP coverage and 113,000 to 311,000 children would lose food assistance, despite remaining eligible, if the proposed rule is finalized.⁹⁷ Also, independent researchers find that up to an estimated 3 million U.S citizen children could lose access to SNAP as a result of the proposed regulation.⁹⁸

b. Families are already afraid to access basic needs programs and this proposal will exacerbate those fears

Additionally, the current political climate, with efforts to reduce legal immigration for the first time in decades and increased arrests and deportations, fear of immigration consequences of using public benefits could be even greater.⁹⁹ Research conducted in 2017 and 2018 confirms anti-immigrant federal policy and rhetoric is already creating barriers in access to health and nutrition programs for people in immigrant families, who have already historically faced significant barriers in accessing public benefit programs. Health and nutrition service providers have noticed an increase in canceled appointments and requests to disenroll from means-tested programs in 2017.¹⁰⁰ Preliminary data for the first half of 2018 showed a 10 percent drop in enrollment among immigrant families eligible for SNAP who have been in the country less than five years, after steady increases for the previous decade.¹⁰¹ Researchers also found that early childhood education programs reported drops in attendance and applications as well as reduced participation from immigrant parents in classrooms and at events, along with an uptick in missed appointments at health clinics.¹⁰² Another recent study found that immigrant families -- including those who are lawfully present -- are experiencing resounding levels of fear and uncertainty across all background and locations.¹⁰³ In a 2018 survey of health care providers in California, more than two-thirds (67 percent) noted an increase in parents’ concerns about enrolling their children in Medi-Cal (California’s

⁹⁶ Leah Zallman, Karen Finnegan *Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care*, California Health Care Foundation, 2018, <https://www.chcf.org/publication/changing-public-charge-immigration-rules/>.

⁹⁷ The Children’s Partnership *Potential Effects of Public Charge on California Children*, 2018, <https://www.childrenspartnership.org/wp-content/uploads/2018/11/Potential-Effects-of-Public-Charge-Changes-on-California-Children-FINAL-1.pdf>.

⁹⁸ Jennifer Laird, Isaac Santelli, et al., “Forgoing Food Assistance out of Fear: Simulating the Child Poverty Impact of a Making SNAP a Legal Liability for Immigrants” SocArXiv, (2018), <https://doi.org/10.31235/osf.io/6sgpk>

⁹⁹ Jeanne Batalova, Michael Fix, and Mark Greenberg “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use” (Washington, DC: Migration Policy Institute, 2018) <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

¹⁰⁰ Jennifer Laird et al, *Foregoing Food Assistance Out of Fear Changes to “Public Charge” Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty*, Columbia Population Research Center (April 5, 2018) https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Pover+ty+and+Social+Policy+Brief_2_2.pdf.

¹⁰¹ American Public Health Association, *Study: Following 10-year gains, SNAP Participation Among Immigrant Families dropped in 2018*, 2018, <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation>.

¹⁰² Hannah Matthews et al, “Immigration Policy’s Harmful Impacts on Early Care and Education,” The Center for Law and Social Policy (March 2018). https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf.

¹⁰³ Samantha Artiga and Petry Ubri, “Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health,” Kaiser Family Foundation, Dec 13, 2017, <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>.

Medicaid program), WIC and CalFresh (California’s SNAP program), and nearly half (42 percent) reported an increase in skipped scheduled health care appointments.¹⁰⁴

CLASP documented the climate of fear in immigrant communities around the country firsthand in our report, *Our Children’s Fear: Immigration Policy’s Effects on Young Children*, based on focus groups and interviews conducted last year. Among our findings, we heard that immigrant families are increasingly wary of utilizing government services, including for their US citizen children. For example:

- A home visitor in North Carolina said, “We’ve seen a major reluctance to enroll or re-enroll in public benefits. Moms are afraid to sign back up for Medicaid, food stamps, and other [governmental] services.”
- Early education programs reported drops in attendance, fewer applications, trouble filling available spaces, and lower parent participation in the classroom and events.¹⁰⁵

Many of the service providers and parents we spoke to told us that immigrant families hesitate to access public benefits and government services out of fear that it will impact their immigration status in the future. If finalized, the proposed rule will legitimize those fears, thereby increasing poverty, hunger, ill health and unstable housing by discouraging enrollment in programs that support basic needs.

For these reasons, researchers from the Kaiser Family Foundation suggest that their analysis based on historical data may underestimate the impact the proposed rule would have on participation in Medicaid/CHIP.¹⁰⁶ Researchers from the Migration Policy Institute land a similar conclusion – usage of public assistance programs could fall even more sharply than the observations from the 1990s. In discussing the extent of the proposed rule’s chilling effect, Migration Policy Institute researchers write, “In the current political climate, with sharper rhetoric about the value of immigration, efforts to reduce legal immigration for the first time in decades, and ramped-up arrests and deportation, fear of the immigration consequences of using public benefits could be even greater.”¹⁰⁷ This suggests that the projected impacts based on 1990s data are conservative estimates of the potential impact of the rule on benefit usage.

c. Access to Health, Nutrition, And Other Key Supports for Working Families Has Positive Effects on Individuals’ Long-Run Economic and Educational Attainment, Which in Turn Contribute to Self-Sufficiency

There is extensive evidence of how participation in basic needs programs positively influence children’s and adults’ health in both the short and long-term as well as educational, and economic outcomes.

¹⁰⁴ The Children’s Partnership, California Children in Immigrant Families: The Health Provider Perspective,” <https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf>.

¹⁰⁵ Wendy Cervantes, Rebecca Ullrich, Hannah Matthews “Our Children’s Fear: Immigration Policy’s Effects on Young Children” (Washington, DC: CLASP, 2018) <https://www.clasp.org/publications/report/brief/our-childrens-fear-immigration-policys-effects-young-children>.

¹⁰⁶ Samantha Artiga, Anthony Damico, Rachel Garfield “Potential Effects of Public Charge Changes on Health Coverage for Citizen Children,” Kaiser Family Foundation,, 2018, <http://files.kff.org/attachment/Issue-Brief-Potential-Effects-of-Public-Charge-Changes-on-Health-Coverage-for-Citizen-Children>.

¹⁰⁷ Batalova *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use..*

SNAP. Children of immigrants who participate in the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) are more likely to be in good or excellent health, be food secure, and reside in stable housing. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.¹⁰⁸ An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence.¹⁰⁹

Another study examined whether increasing the family's economic resources when a child is in utero and during childhood improves later life health and economic outcomes. Using data from the Panel Study of Income Dynamics to link family background and county of residence with adult health and economic outcomes, the researchers found that access to food assistance leads to a significant reduction in the incidence of metabolic syndrome and, for women, an increase in economic self-sufficiency.¹¹⁰

Conversely, children living in food insecure households are more likely to suffer from poor health and frequent illness and to be hospitalized more frequently.¹¹¹ Specifically, child food insecurity is associated with chronic diseases and health conditions, including asthma, behavioral and social-emotional problems (e.g., hyperactivity), birth defects, mental health problems (such as depression and anxiety), frequent colds and stomachaches, and oral care problems.¹¹² Not having enough to eat also affects children's ability to perform in

¹⁰⁸ Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive*, 2018, <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>

¹⁰⁹ Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

¹¹⁰ Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," American Economic Association (April 2016), pp. 903-934. Found online at <https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf>.

¹¹¹ Craig Gundersen and James P. Ziliak, "Food Insecurity and Health Outcomes," *Health Affairs* 34(2015), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0645>; John T Cook, Deborah A. Frank, Carol Berkowitz, et al., "Food insecurity is associated with adverse health outcomes among human infants and toddlers," *The Journal of Nutrition* 134 (2004), <https://academic.oup.com/jn/article/134/6/1432/4870889>.

¹¹² Lauren D. Mangini, Mark D. Hayward, Yong Quan Dong, et al., "Household food insecurity is associated with childhood asthma," *The Journal of Nutrition*, 145(2015), <https://academic.oup.com/jn/article/145/12/2756/4585668>; Rachel Tolbert Kimbro and Justin T. Denney, "Transitions into Food Insecurity Associated with Behavioral Problems and Worse Overall Health Among Children," *Health Affairs* 34 (2015), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0626>; Anna D. Johnson and Anna J. Markowitz, "Associations Between Household Food Insecurity in Early Childhood and Children's Kindergarten Skills," *Child Development* 89 (2018), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/cdev.12764>; Suzan L. Carmichael, Wei Yang, Amy Herring, et al., "Maternal Food Insecurity is Associated with Increased Risk of Certain Birth Defects," *J Nutr* 137(2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2063452/>; Natalie Slopen, Garratt Fitzmaurice, David R. Williams, et al., "Poverty, Food Insecurity, and the Behavior for Childhood Internalizing and Externalizing Disorders," *Journal of the American Academy of Child & Adolescent Psychology* 49 (2010), http://scholar.harvard.edu/files/davidwilliams/files/2011-poverty_food_insecurity-williams.pdf; Priya Shankar, Rainjade Chung, and Deborah A. Frank, "Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systemic Review," *Journal of Developmental and Behavioral Pediatrics* 38 (2017), <https://pdfs.semanticscholar.org/4655/0ad7196155123c70dcd1cc5af710879ae27a.pdf>; Katie A. McLaughlin, Jennifer Greif Green, Margarita Alegria, et al., "Food Insecurity and Mental Disorders in a National Sample of U.S. Adolescents," *J Am Acad Child Adolesc Psychiatry* 51 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632292/>; Katherine Alaimo, Christine M. Olson, Edward A. Frongillo Jr., et al., "Food Insufficiency, Family Income, and Health in US Preschool and School-Age Children," *American Journal of Public Health* 91 (2001),

school. Food insecurity is associated with lower scores on reading and math assessments and a greater likelihood of grade retention.¹¹³ Among low-income seniors, receipt of SNAP is associated with reduced hospitalization costs.¹¹⁴

Medicaid. Overall, there is an extensive and strong research literature that shows, as a recent New England Journal of Medicine review concludes “Insurance coverage increases access to care and improves a wide range of health outcomes.”¹¹⁵

Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs.¹¹⁶ Low-income children with Medicaid use well-child and dental health services compared to similar children with private insurance.¹¹⁷ Duration of insurance coverage matters greatly: children who are insured consistently throughout a given year are far more likely to receive necessary health care services than those whose coverage is volatile.¹¹⁸

Insurance coverage in childhood promotes positive development and good health, which in turn enable better health, educational, and employment outcomes later in life. Individuals exposed to Medicaid during early childhood have better composite health scores, lower incidences of high blood pressure, lower rates of obesity, fewer emergency room visits, and reduced hospitalizations as adults.¹¹⁹ Similarly, childhood Medicaid

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446676/pdf/11344887.pdf>; Donald L. Chi, Erin E. Masterson, Adam C. Carle, et al., “Socioeconomic Status, Food Security, and Dental Caries in US Children: Mediation Analyses of Data from the National Health and Nutrition Examination Survey, 2007-2008,” *American Journal of Public Health* 104 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987603/>.

¹¹³ Priya Shankar, Rainjade Chung, and Deborah A. Frank, “Association of Food Insecurity with Children’s Behavioral, Emotional, and Academic Outcomes: A Systemic Review,” *Journal of Developmental and Behavioral Pediatrics* 38 (2017), <https://pdfs.semanticscholar.org/4655/0ad7196155123c70dcd1cc5af710879ae27a.pdf>; Diana F. Hyoti, Edward A. Frongillo, and Sonya J. Jones, “Food Insecurity Affects School Children’s Academic Performance, Weight Gain, and Social Skills,” *J Nutr* 135 (2005), <https://pdfs.semanticscholar.org/7d09/8555673094109056fd3beb58dc4464570bc0.pdf>; Bergen B. Nelson, Rebecca N. Dudovitz, Tumaini R. Coker, et al., “Predictors of Poor School Readiness in Children Without Developmental Delay at Age 2,” *Pediatrics* 138 (2016), <http://pediatrics.aappublications.org/content/138/2/e20154477>.

¹¹⁴ Laura J. Samuel, Sarah L. Szanton, Rachel Cahill, Jennifer L. Wolff, Pinchuan Ong, Ginger Zielinskie, Charles Betley. *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization Among Older Adults? The Case of Maryland*, Population Health Management. (2018) <http://doi.org/10.1089/pop.2017.0055> .

¹¹⁵ Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherine Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, *New England Journal of Medicine*, July 21, 2017, <http://www.nejm.org/doi/full/10.1056/NEJMs1706645>.

¹¹⁶ Christine Percheski and Sharon Bzostek, “Public Health Insurance and Health Care Utilization for Children in Immigrant Families,” *Maternal and Child Health Journal* 21 (2017), <https://link.springer.com/article/10.1007/s10995-017-2331-y>.

¹¹⁷ Lisa Dubay and Genevieve M. Kenney, “Health Care Access And Use Among Low-Income Children: Who Fares Best?” *Health Affairs* 20 (2001), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.20.1.112>.

¹¹⁸ Lindsey J. “Partial-Year Insurance Coverage and the Health Care Utilization of Children,” *Med Care Res Rev* 66 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/18981264/>; Thomas Buchmueller, Sean M. Orzol, and Lara Shore-Sheppard, “Access to Care: Evidence from the Survey of Income and Program Participation,” *International Journal of Health Care Finance and Economics* 14 (2014), <https://www.ncbi.nlm.nih.gov/pubmed/24504692>.

¹¹⁹ Alisa Chester Joan Alker, *Medicaid at 50: A Look at the Long-Term Benefits of Childhood Medicaid*, Georgetown University Health Policy Institute Center for Children and Families, 2015, https://ccf.georgetown.edu/wp-content/uploads/2015/08/Medicaid-at-50_final.pdf; Sarah Miller and Laura R. Wherry, *The Long-Term Effects of Early Life Medicaid Coverage*, Working Paper, Social Science Research Network, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466691.

eligibility is associated with high school graduation rates, college attendance, and higher incomes in adulthood.¹²⁰ Another study using data from the IRS to measure long-term impacts of childhood Medicaid expansion on outcomes in adulthood, found that greater Medicaid eligibility increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.¹²¹

Conversely, children who are uninsured or inconsistently insured often face difficulty obtaining the health care services necessary to prevent illnesses and treat medical conditions when they arise. Therefore, they are more likely to have unmet care needs, to delay medical care, and to need but not receive mental health services than their peers with private or public health insurance.¹²² Uninsured children are also far more likely to utilize emergency care.¹²³ Lack of insurance can be a matter of life or death: One analysis found that uninsured children were 3.32 times more likely to die as a result of traumatic injury compared to children with commercial (non-public) insurance, even after controlling for other factors.¹²⁴

Housing assistance. Eviction due to inability to afford rent often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which are associated with negative health among adults and children. Even just the threat of eviction can lead to high blood pressure, depression, anxiety, and psychological distress.¹²⁵ Research also shows that children whose families take up a housing voucher to move to a lower-poverty neighborhood when they are less than 13 years of age have significantly higher college attendance rates and an annual income that is 31 percent higher, on average.¹²⁶

Children whose families receive housing assistance are more likely to have a healthy weight and to rate higher

¹²⁰ Karina Wagnerman, Alisa Chester, Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>.

¹²¹ David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, "Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood," Yale University Department of Economics (June 2018). Found online at <http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf>.

¹²² Jennifer E. DeVoe, Moira Ray, Lisa Krois, et al., "Uncertain Health Insurance Coverage and Unmet Children's Health Care Needs," *Health Services Research* 42 (2010), <http://www.stfm.org/fmhub/fm2010/February/Jennifer121.pdf>; Steven G. Federico, John F. Steiner, Brenda Beaty, et al., "Disruptions in Insurance Coverage: Patterns and Relationship to Health Care Access, Unmet Need, and Utilization Before Enrollment in the State Children's Health Insurance Program," *Pediatrics* 120 (2007), <http://pediatrics.aappublications.org/content/120/4/e1009.long>; Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017), <https://link.springer.com/article/10.1007/s10995-017-2331-y>; Sheryl H. Kataoka, Lily Zhang, and Kenneth B. Wells, "Unmet Need for Mental Health Care Among U.S. Children: Variation by Ethnicity and Insurance Status," *Am J Psychiatry* 159 (2002), <https://ajp.psychiatryonline.org/doi/pdf/10.1176/appi.ajp.159.9.1548>.

¹²³ William G. Johnson, Mary E. Rimza, "The Effects of Access to Pediatric Care and Insurance Coverage on Emergency Department Utilization," *Pediatrics* 113 (2004), https://www.researchgate.net/profile/William_Johnson14/publication/5848895_The_Effects_of_Access_to_Pediatric_Care_and_Insurance_Coverage_on_Emergency_Department_Utilization.

¹²⁴ Heather Rosen, Fady Saleh, Stuart R. Lipsitz, et al., "Lack of insurance negatively affects trauma mortality in U.S. children," *Journal of Pediatric Surgery* 44 (2009), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.903.8114&rep=rep1&type=pdf>.

¹²⁵ http://www.mapc.org/wp-content/uploads/2017/11/HIA_Just_Cause_final.pdf

¹²⁶ Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: new Evidence from the Moving to Opportunity Experiment," Harvard University and NBER (August 2015). Found online at http://scholar.harvard.edu/files/hendren/files/mto_paper.pdf.

on measures of well-being—especially when housing assistance is accompanied by food assistance.¹²⁷ Without housing assistance, children are more likely to live in overcrowded conditions, become homeless, and move frequently.¹²⁸ They are also more likely to remain in high-poverty neighborhoods, which is associated with poor health and educational outcomes.¹²⁹ Research demonstrates that when housing subsidies are permanent, reliable, and consistent, they are more likely to have positive impacts on children’s behavior, access to health care, and food security.¹³⁰

Various forms of housing instability have adverse outcomes on child development, including poor health and developmental risk.¹³¹ Mothers who experience homelessness or frequent moves while pregnant are more likely to have preterm deliveries and babies with low birth weights.¹³² Children in poverty who move frequently during early childhood have higher rates of attention difficulties and behavior problems.¹³³ Housing instability in childhood is also associated with poor health and more hospitalizations over the course of a child’s life.¹³⁴ 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.¹³⁵

Income. Using data from seven random-assignment studies conducted by MDRC that collectively evaluated 10 welfare and antipoverty programs in 11 sites, the researchers found that a \$1,000 increase in annual income sustained for between 2- and 5-years boosts child achievement in school and standardized test scores

¹²⁷ Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children’s Health*, Children’s HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf.

¹²⁸ Michelle Wood, Jennifer Turnham, Gregory Mills, “Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation,” *Housing Policy Debate* 19 (2008), [www.abtassociates.com/reports/Woods_Turnham_Mills_\[11\]_HPD.pdf](http://www.abtassociates.com/reports/Woods_Turnham_Mills_[11]_HPD.pdf); Janet Currie, Aaron Yelowitz, “Are Public Housing Projects Good for Kids?” *Journal of Public Economics* 75 (2000), www.yelowitz.com/CurrieYelowitzJPubE2000.pdf; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-term Gains Among Children*, Center on Budget and Public Policy, 2015, www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf.

¹²⁹ Barbara Sard, Douglas Rice, *Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods*, Center on Budget and Policy Priorities, 2016, <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to>.

¹³⁰ Aletha C. Huston, “U.S. Commentary: Effects of Housing Subsidies on the Well-Being of Children and Their Families in the Family Options Study,” *Cityscape: A Journal of Policy Development and Research* 19 (2017), <https://www.huduser.gov/portal/periodicals/cityscape/vol19num3/ch15.pdf>.

¹³¹ Diana Becker Cutts, Alan F. Meyers, Maureen M. Black, et al, “US Housing Insecurity and the Health of Very Young Children,” *Am J Public Health* 101 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134514/>.

¹³² Diana B. Cutts, Sharon Coleman, Maureen M. Black, et al., “Homelessness During Pregnancy: A Unique, Time-Dependent Risk Factor of Birth Outcomes,” *Matern Child Health J* 19 (2015), <https://link.springer.com/article/10.1007%2Fs10995-014-1633-6>; Bianca V. Carrion, Valerie A. Earnshaw, Trace Kershaw, et al, “Housing Instability and Birth Weight among Young Urban Mothers,” *J Urban Health* 92 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4338127/>.

¹³³ Kathleen M. Ziol-Guest, Claire C. McKenna, “Early Childhood Housing Instability and School Readiness,” *Child Development* 85 (2014), <https://onlinelibrary.wiley.com/doi/abs/10.1111/cdev.12105>.

¹³⁴ Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, et al, “Unstable Housing and Caregiver and Child Health in Renter Families,” *Pediatrics* 141 (2018), https://www.researchgate.net/profile/Mariana_Chilton/publication/322642849_Unstable_Housing_and_Caregiver_and_Child_Health_in_Renter_Families.

¹³⁵ 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), available at <http://gradworks.umi.com/3639463.pdf>.

by 6% of a standard deviation.¹³⁶

Taken together, this and other research on access to health,¹³⁷ nutrition,¹³⁸ and housing¹³⁹ assistance shows the strong, positive, and long-run effects on children and individual's health, educational, and economic attainment.

d. The Department Fails to Adequately Evaluate the Impacts of the Rule

The proposed rule will have negative consequences for individuals, families, communities, health care providers, state and local governments and businesses. In fact, the notice of proposed rulemaking itself acknowledges in multiple places that the proposed rule would cause great harm to, although it fails to quantify this harm and therefore largely ignores it.

The Department fails to adequately evaluate the impacts of the proposed rule, including in its discussion of costs and benefits in the Executive Summary and the "Cost-Benefit Analysis" section, leaving out considerable impacts to individuals and families, state and local economies, as well as specific sectors of the economy in their analysis. In fact, the only costs that are actually reported are the direct and opportunity costs of the time spent filing the required forms. Because the Department does not provide a rigorous qualitative discussion or reliable quantitative estimates of the proposed rule's impact, the Department makes impossible for the public to understand and comment on the justification of the rule or its effects.

The Office of Management and Budget has published a primer that summarizes what is involved in a cost-benefit analysis as required under Executive Order 13563, Executive Order 12866, and OMB Circular A-4.¹⁴⁰ This primer

¹³⁶ Greg J. Duncan, Pamela A. Morris, and Chris Rodrigues, "Does Money Really Matter? Estimating impacts of family income on young children's achievement with data from random-assignment experiments," *Developmental Psychology* (September 2011), pp. 1263-1279. Found online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208322/pdf/nihms-330900.pdf>.

¹³⁷ Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017), <https://link.springer.com/article/10.1007%2Fs10995-017-2331-y>; and Karina Wagnerman, Alisa Chester, and Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>.

¹³⁸ Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive*, 2018, <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>; and Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

¹³⁹ Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf; Michelle Wood, Jennifer Turnham, Gregory Mills, "Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation," *Housing Policy Debate* 19 (2008), [www.abtassociates.com/reports/Woods_Turnham_Mills_\[11\]_HPD.pdf](http://www.abtassociates.com/reports/Woods_Turnham_Mills_[11]_HPD.pdf); Janet Currie, Aaron Yelowitz, "Are Public Housing Projects Good for Kids?" *Journal of Public Economics* 75 (2000), www.yelowitz.com/CurrieYelowitzJPubE2000.pdf; Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-term Gains Among Children*, Center on Budget and Public Policy, 2015, www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf; and Barbara Sard and Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, Center on Budget and Policy Priorities, 2016, <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to>.

¹⁴⁰ Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer, N-d*, https://reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.

states that agencies must produce:

"an estimate of the benefits and costs —both quantitative and qualitative—of the proposed regulatory action and its alternatives: After identifying a set of potential regulatory approaches, the agency should conduct a benefit-cost analysis that estimates the benefits and costs associated with each alternative approach. The benefits and costs should be quantified and monetized to the extent possible, and presented in both physical units (e.g., number of illnesses avoided) and monetary terms. When quantification of a particular benefit or cost is not possible, it should be described qualitatively. The analysis of these alternatives may also consider, where relevant and appropriate, values such as equity, human dignity, fairness, potential distributive impacts, privacy, and personal freedom. The agency's analysis should be based on the best available scientific, technical, and economic information. To achieve this goal, the agency should generally rely on peer-reviewed literature, where available, and provide the source for all original information. In cases of particular complexity or novelty, the agency should consider subjecting its analytic models to peer review. In cases in which there is no reliable data or research on relevant issues, the agency should consider developing the necessary data and research."

DHS has completely failed to meet this regulatory standard. This section sets out key examples of the inadequacies of the Department's evaluation of the rule.

- *Chilling Effect*

The Department fails to seriously account for the chilling effect of the rule in its estimates of disenrollment. For example, the Department estimates that approximately 142,000 individuals would disenroll from Medicaid. Rather than account for the chilling effect, the Department assumes that all individuals applying to adjust status drop coverage, but no other individuals would drop coverage, such as family members or other noncitizen families. The Department, however, recognizes that, "when eligibility rules change for public benefits programs there is evidence of a chilling effect that discourages immigrants from using public benefits programs for which they are still eligible." The Department also notes that previous studies examining the effect of welfare reform changes showed enrollment reductions ranging from 21% to 54% due to this chilling effect. Despite this recognition and the evidence in the literature cited above, the Department does not account for a chilling effect in its estimate of disenrollment.¹⁴¹

The Department identifies a list of potential consequences of the proposed rule but does not quantify their effects. In particular, at 83 FR 51270 the Department recognizes that disenrollment or foregoing enrollment in public benefits programs could lead to "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence; increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment; increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated; increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; increased rates of poverty and housing instability; and reduced productivity and

¹⁴¹ Samantha Artiga, Rachel Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018) <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

educational attainment.” However, the Department makes no attempt to quantify the extent of these harmful outcomes, let alone to quantify the cost to society. This is true even though there are rigorous studies that have assessed the cost of many of these outcomes. For example, research has found that greater Medicaid eligibility increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.¹⁴² Studies have found that every state dollar spent on prenatal care saves states between \$2.57 and \$3.38 in future medical costs.¹⁴³ Similarly, spending on SNAP for seniors has been shown to reduce hospitalization costs.¹⁴⁴ A meaningful cost-benefit analysis would include a comprehensive review of the literature in order to create upper and lower bounds for plausible estimates of the impacts of the rule.

Similarly, the Department mentions but fails to take into account economic impacts of the rule to states. In particular, at 83 FR 51228-29, the Department recognizes that “reductions in federal and state transfers under federal benefit program may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals.” However, it makes no attempt to measure this impact. As described in more detail in section IV, there are considerable economic and fiscal losses associated with the rule. The Fiscal Policy Institute estimates \$17.5 billion in loss of health care and food supports, \$33.8 billion in potential economic ripple effects of this lost spending, and 230,000 in potential jobs lost because of this reduction in federal spending, under a 35 percent disenrollment scenario. The ten hardest hit states would be Arizona, California, Florida, Georgia, Illinois, Massachusetts, New Jersey, New York, Texas, and Washington, accounting for approximately three-quarters of the total losses of federal funds to individuals in states, potential economic ripple effects, and potential jobs lost, under the 35% disenrollment scenario.¹⁴⁵

The Department’s analysis also fails to address how the rule will affect providers and key sectors within the economy. Based on analysis from Manatt Health, researchers estimate that approximately \$17 billion worth of hospital payments are at risk under the proposed rule.¹⁴⁶ In addition, researchers also estimate the devastating impact of the rule on community health centers. As a result of the chilling effect of the rule, community health centers could lose up to \$624 million in Medicaid revenue, resulting in 538,000 fewer patients served by the reduction in capacity and a loss of 6,100 medical staff jobs.¹⁴⁷ Additionally, based on independent analysis of the proposed rule’s impact on the economy in California, researchers of the UCLA Center for Health Policy Research found that key sectors would be affected by the rule using IMPLAN, an industry-standard input-output economic modeling software package. Under a 35% disenrollment scenario, researchers found that 13,200 jobs would be

¹⁴² David W. Brown, Amanda E. Kowalski, and Ithai Z. Lurie, “Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood,” Yale University Department of Economics (June 2018). Found online at <http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf>.

¹⁴³ Gorsky, “The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire”.; Institute of Medicine, “Preventing Low Birth Weight”.

¹⁴⁴ Samuel, *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization*.

¹⁴⁵ Fiscal Policy Institute “Only Wealthy Immigrants Need Apply: How A Trump Rule’s Chilling Effect Will Harm the U.S.” (New York, NY: FPI, 2018) <http://fiscalfpolicy.org/public-charge>.

¹⁴⁶ Cindy Mann, April Grady, Allison B. Orris “Medicaid Payments at Risk for Hospitals Under Public Charge” (New York, NY: Manatt Health, November 2018) <https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ>.

¹⁴⁷ Leighton Ku, Jessica Sharac, Rachel Gunsalus, Peter Shin, Sara Rosenbaum “How Could the Public Charge Proposed Rule Affect Community Health Centers?” (Washington, DC: Geiger Gibson / RCHN Community Health Foundation Research Collaborative, November 2018) <https://publichealth.gwu.edu/sites/default/files/downloads/GGRCHN/Public%20Charge%20Brief.pdf>.

lost due to reduced federal support for Medicaid and 4,600 jobs lost due to reduced federal SNAP benefits. Of these more than 17,000 combined jobs lost in California, approximately 47% would be from the healthcare sector, including hospitals, doctors' offices, and labs, approximately 10% would be from food-related industries, including food retail stores, manufacturing, and agriculture, and 4% would be from real estate, including businesses primarily engaged in renting real estate, managing real estate for others, and selling, buying, or renting real estate for others.¹⁴⁸

- *Effects on immigration*

At 83 FR 51230, the Department acknowledges that it "anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations." As noted before, a recent study by the Migration Policy Institute gives a sense of the scale here, finding that when recent green card recipients are compared to the new criteria, over two-thirds would have at least one negative factor under the proposed rule and more than 40% would have two or more negative factors.¹⁴⁹ However the Department fails to provide any estimate of the number of people who would be denied adjustment, or any analysis of the impacts of these denials on the individuals, their families and communities, their employers, or society as a whole.

For example, extensive research shows that parental detention and deportation harms a child's mental and physical health, economic security, and educational outcomes.¹⁵⁰ A parent's deportation can drastically undercut the economic security of families already struggling to make ends meet, especially when that parent is the primary or sole breadwinner. One study estimates that the sudden loss of a deported parent's income can reduce a family's household income by 73 percent.¹⁵¹

Overall, the Department fails to adequately assess the likely impacts of the rule. The Department's current evaluation of the rule does not provide the necessary information to determine the justification of the rule and how the rule will affect our nation in the short and long term. Moreover, it consistently neglects to take into account the research evidence presented throughout these comments and readily available upon even a cursory examination of the literature. By focusing on the relatively minor costs involved in filling out the new forms, the Department consistently and drastically underestimates the costs, to a degree that makes it impossible to justify

¹⁴⁸ Ninez Ponce, Laurel Lucia, and Tia Shimada "How Proposed Changes to the 'Public Charge' Rule Will Affect Health, Hunger and the Economy in California" (Los Angeles, CA: UCLA Center for Health Policy Research, November 2018) <https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>.

¹⁴⁹ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

¹⁵⁰ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 2010, <http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PDF>; Brian Allen, Erica M. Cisneros, Alexandra Tellez, "The Children Left Behind: The Impact of Parental Deportation on Mental Health," *Journal of Child and Family Studies* 24 (2015), <https://link.springer.com/article/10.1007/s10826-013-9848-5>; Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24 (2015), . <https://link.springer.com/article/10.1007%2Fs10826-015-0124-8>.

¹⁵¹ Randy Capps, Heather Koball, James D. Bachmeier, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, MPI, 2016, <http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effectsfamilies>.

the rule.

Even just with regard to the paperwork, the Department's analysis falls short, as it also fails to adequately analyze the costs to both public and private agencies who will need to help impacted families comply with the new requirements, including the costs of understanding the rule and communicating with immigrant families about the rule. Also, the Department omits any discussion of its own burden in handling a more complex determination.

III. **THE PROPOSED REGULATION WOULD CAUSE PERMANENT HARM TO CHILDREN, WOMEN, YOUNG ADULTS, AND FAMILIES**

The rule poses significant harm to the health and wellbeing of children, women, young adults, and families. The changes in the proposed rule undercut the foundations that children need to thrive and would dramatically alter the lives of countless families across the U.S.

Children in immigrant families comprise a large share of the child population in the U.S. As of 2016, nearly 18 million children under the age of 18 had one or more parents who were born outside of the U.S. The vast majority—88 percent—were U.S.-born citizens.¹⁵² Just 12 percent were immigrants themselves. Immigrant women comprise 52 percent of the U.S. immigrant population, and many are parents of U.S citizen children.¹⁵³ An estimated 3.6 million immigrants are between the ages of 18 and 25, 8 percent of the immigrant population and 10 percent of all young adults.¹⁵⁴

The expanded definition of public charge will lead to millions of children, women, and young adults losing access to the programs and services they need to thrive out of fear of immigration consequences. Without the programs that make food, housing, and/or health care more affordable and accessible, many families will be financially destabilized and potentially thrown into poverty. Children's health and development will be compromised, with long-term consequences for their wellbeing into adulthood. Women may face greater barriers to accessing critical health care services—especially pregnant women, for whom affordable care is often in short supply. And young adults may be less likely to pursue the higher education and career pathway opportunities that set them on a path to success in the future.

The standards proposed in the “totality of circumstances” determinations will also have a disproportionate impact on immigrant children, women, and parents—particularly mothers with young children. The standards favor wealth and constant employment, and disfavor characteristics overwhelmingly held by these populations, such as being a full-time caregiver, having lower income, having a large household size, having dependent children, or simply being a child. To the extent that these standards lead to more parents being denied lawful permanent residency, children's lives will be further destabilized.

¹⁵² Migration Policy Institute, “Children in U.S. Immigrant Families,” n.d., <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families>.

¹⁵³ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” Migration Policy Institute, February 8, 2018, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

¹⁵⁴ CLASP analysis of 2016 American Community Survey Data

Finally, a very large number of children who stand to be harmed by the rule are U.S. citizens. The Department acknowledges the likely harm to them in its cost estimates but vastly underestimates the damage imposed by less access to health, nutrition, and other support programs; by parents' and families' stress and poverty; and by the effects of denial of long-term permanent residence to a parent. The consequence of the rule would be to create a second-class of U.S.-born children who are treated less favorably than other citizen children and denied an opportunity to reach their potential solely because of their parents' nativity and economic status.

a. The Expanded Definition of Public Charge Will Deter Families from Using Public Assistance Programs That Promote Their Health and Economic Security

The rule proposes to change the definition of who may be deemed a public charge and, as a result, denied entrance to the United States or lawful permanent residency. Proposed section 212.21 lays out the Department's proposed definition of "public charge," which would allow government officials to consider an applicant's use of benefits beyond the existing standards of cash assistance and long-term institutional care to include Medicaid, the Supplemental Nutrition Assistance Program (SNAP), housing assistance, and Medicare Part D subsidies. This change would likely lead individuals to withdraw or disenroll from benefit programs that support their health, wellbeing, and financial security.

On page 51270, in the cost-benefit analysis section, the Department explicitly acknowledges that the rule could lead to "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children...increased prevalence of communicable diseases...increased rates of poverty and housing instability; and reduced productivity and educational attainment." Yet the Department does not acknowledge just how extensive these impacts would be, particularly for children, women, and young adults.

i. Children Will Face Increased Familial Stress and Hardship and Lose Access to The Programs That Keep Them Healthy, Fed, and Housed

Like all children, children in immigrant families do best when they have a safe place to live and enough food to eat; when their family's income is stable; and when their parents and caregivers are mentally and physically healthy and able to care for them. Yet the proposed changes to "public charge" provisions in immigration law undercut these very foundations that children need to thrive and dramatically alter the lives of countless families across the U.S.

Proposed sections 212.21 through 212.22 and the preamble to the rule assert that only the use of benefits by an individual would be considered in public charge determinations, and any benefits received by dependents—including U.S. citizen-children—would not be considered. However, there is no way to influence immigrant parents' access to benefits without also affecting the health, safety, and economic security of their children. Parents' access to these services matters greatly for their own health and wellbeing, which in turn has direct consequences on their children's developmental trajectories. Parents' access to public benefits is also correlated with children's access to services as well. If parents—and therefore their children—lose access to the programs that keep them healthy, fed, and housed, their economic security will be threatened, as will their long-term health and developmental outcomes.

Parents' health and wellbeing is inextricably linked with that of their children.

Low-income families are more likely to experience substantial and persistent adversity--sometimes called toxic stress--in their day-to-day lives. Not having enough food to eat; inadequate or unstable housing; economic insecurity; child neglect or abuse; domestic violence; and parental mental health problems are examples of adverse experiences that can lead to toxic stress. Experiencing any single form of toxic stress--particularly in early childhood--can interfere with children's healthy development, altering how they learn and their ability to manage their emotions.¹⁵⁵ It can also lead to physical and mental health problems that last into adulthood.¹⁵⁶ Children living in poor and low-income households are at greater risk of experiencing multiple forms of hardship, which does far greater damage to their long-term development than simply adding up the effects of each individual risk factor.¹⁵⁷

A supportive, nurturing parent-child relationship acts as a buffer against the effects of toxic stress on children, making parents' own wellbeing an important determinant of their children's health and development.¹⁵⁸ In the earliest years of life, children's interactions and relationships with their primary caregivers lay the foundation for healthy development.¹⁵⁹ Responsive caregiving lets children know they are safe and protected. That helps them regulate stress, encourages them to explore their environments, and supports early learning.¹⁶⁰ When parents are healthy, well, and cared for, they're better able to provide financially for their families and support their children's development.¹⁶¹ Parents who report they are in good health are more likely to have children who are in good

¹⁵⁵ National Scientific Council on the Developing Child, Persistent Fear and Anxiety Can Affect Young Children's Learning and Development: Working Paper No. 9, 2010, <https://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/>; Clancy Blair and C. Cybele Raver, "Poverty, Stress, and Brain Development: New Directions for Prevention and Intervention," *Acad Pediatr* 16 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5765853/>.

¹⁵⁶ Jack P. Shonkoff, Andrew S. Garner, et al. "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," *Pediatrics* 129 (2012), <http://pediatrics.aappublications.org/content/129/1/e232>.

¹⁵⁷ Karen Hughes, Mark A. Bellis, Katherine A. Hardcastle, et al., "The Effect of Multiple Adverse Childhood Experiences on Health: A Systematic Review and Meta-Analysis," *The Lancet Public Health* 2 (2017), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(17\)30118-4/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(17)30118-4/fulltext); Elizabeth A. Schilling, Robert H. Aseltine, and Susan Gore, "The Impact of Cumulative Childhood Adversity on Young Adult Mental Health: Measures, Models, and Interpretations," *Social Science & Medicine* 66 (2008), <https://www.sciencedirect.com/science/article/pii/S0277953607006065?via%3Dihub>; Natalie Slopen, Karestan C. Koenen, Laura D. Kubzansky, "Cumulative Adversity in Childhood and Emergent Risk Factors for Long-Term Health," *The Journal of Pediatrics* 164 (2014), <https://www.sciencedirect.com/science/article/pii/S0022347613013899?via%3Dihub>.

¹⁵⁸ National Scientific Council on the Developing Child, *Young Children Develop in an Environment of Relationships: Working Paper No. 1*, 2009, <http://developingchild.harvard.edu/wp-content/uploads/2004/04/Young-Children-Develop-in-an-Environment-of-Relationships.pdf>.

¹⁵⁹ Catherine Ayoub, Claire D. Vallotton, and Ann M. Mastergeorge, "Developmental Pathways to Integrated Social Skills: The Roles of Parenting and Early Intervention", *Child Development* 82 (2011), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8624.2010.01549.x>; Richard Lerner, Fred Rothbaum, Shireen Boulos, et al., "Developmental Systems Perspective on Parenting," in *Handbook of Parenting: Volume 2 Biology and Ecology of Parenting*, ed. Marc H. Bornstein (2002), <http://psycnet.apa.org/record/2002-02628-011>.

¹⁶⁰ Mary D Salter Ainsworth, Mary C. Blehar, Everett Waters et al., "Patterns of Attachment: A Psychological Study of the Strange Situation," 1978, <http://psycnet.apa.org/record/1980-50809-000>; T. Berry Brazelton and Bertrand Cramer, "The Earliest Relationship: Parents, Infants, and the Drama of Early Attachment," 1990, <http://psycnet.apa.org/record/1990-97173-000>.

¹⁶¹ Elisabeth Wright Burak, *Healthy Parents and Caregivers are Essential to Children's Healthy Development*, Georgetown

health, too.¹⁶²

Conversely, when parents face significant adversity themselves and don't have the supports they need, their mental and physical health suffers. Among caregivers renting their homes, various forms of housing instability are associated with poor health and symptoms of maternal depression.¹⁶³ Parents whose families are food insecure also report higher rates of serious psychological distress.¹⁶⁴ And parents who are uninsured face greater financial stressors--and subsequent psychological challenges--associated with affording basic medical care on top of other every day expenses.¹⁶⁵

Parents' own stress and health challenges can impede effective caregiving and have the effect of exacerbating rather than buffering against the effects of adversity on young children,¹⁶⁶ with lasting consequences for their health and development. For example, children are more likely to experience mental health and developmental challenges when their parents have a mental health condition.¹⁶⁷

Parental health is also associated with children's educational outcomes, with adolescents being less likely to graduate from high school if their parents report "fair" or "poor" health.¹⁶⁸

University Health Policy Institute, Center for Children and Families, 2016, <https://ccf.georgetown.edu/2016/12/12/healthy-parents-and-caregivers-are-essential-to-childrens-healthy-development/>; Anne Case and Christina Paxson, "Parental Behavior and Child Health," *Health Affairs* 21 (2002), <http://content.healthaffairs.org/content/21/2/164.full>; Stephanie Schmit and Christina Walker, *Seizing New Policy Opportunities to Help Low-Income Mothers with Depression*, CLASP, 2016, www.clasp.org/resources-and-publications/publication-1/Opportunities-to-Help-Low-Income-Mothers-with-Depression-2.pdf; National Scientific Council on the Developing Child and National Forum on Early Childhood Program Evaluation, "Maternal Depression Can Undermine the Development of Young Children," Center on the Developing Child, Harvard University, Working Paper 8, 2009, <http://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children/>.

¹⁶² Anne Case and Christina Paxson, "Parental Behavior and Child Health," *Health Affairs* 21 (2002), <http://content.healthaffairs.org/content/21/2/164.full>.

¹⁶³ Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, et al., "Unstable Housing and Caregiver and Child Health in Renter Families," *Pediatrics* 141 (2018), <http://pediatrics.aappublications.org/content/141/2/e20172199>.

¹⁶⁴ Katie K. Tseng, Su Hyun Park, Jenni A. Shearston, et al., "Parental Psychological Distress and Family Food Insecurity: Sad Dads in Hungry Homes," *Journal of Developmental and Behavioral Pediatrics*, 38 (2017), <https://insights.ovid.com/crossref?an=00004703-201710000-00006>.

¹⁶⁵ Stacey McMorro, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," *Health Affairs* 36 (2017), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1650>.

¹⁶⁶ Caroline Ratcliffe and Signe-Mary McKernan, *Child Poverty and Its Lasting Consequence*, Urban Institute, 2012, <http://www.urban.org/UploadedPDF/412659-Child-Poverty-and-Its-Lasting-Consequence-Paper.pdf>; Clancy Blair and C. Cybele Raver, "Poverty, Stress, and Brain Development: New Directions for Prevention and Intervention," *Acad Pediatr* 16 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5765853/>.

¹⁶⁷ Stephanie Schmit and Christina Walker, *Seizing New Policy Opportunities to Help Low-Income Mothers with Depression*, CLASP, 2016, www.clasp.org/resources-and-publications/publication-1/Opportunities-to-Help-Low-Income-Mothers-with-Depression-2.pdf; National Scientific Council on the Developing Child and National Forum on Early Childhood Program Evaluation, "Maternal Depression Can Undermine the Development of Young Children," Center on the Developing Child, Harvard University, Working Paper 8, 2009, <http://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children/>; Stephen M. Amrok and Michael Weitzman, "Parental Psychological Distress and Children's Mental Health: Results of a National Survey," *Academic Pediatrics*, 14 (2014), [https://www.academicpediatrics.net/article/S1876-2859\(14\)00057-6/fulltext](https://www.academicpediatrics.net/article/S1876-2859(14)00057-6/fulltext); Colorado Health Institute, *The Link Between Parent and Child Mental Health in Colorado*, 2016, https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/Final%20Brief_0.pdf.

¹⁶⁸ Jason D. Boardman, Kari B. Alexander, Richard Miech, et al., "The Association BETWEEN Parent's Health and th Educational

When parents lose access to public benefits, their children lose access too.

What's more, children are inherently dependent upon their parents for material support. Penalizing immigrant parents for using publicly funded health, nutrition, and housing programs for which they are legally eligible will likely result in children losing these services as well. Research demonstrates that the likelihood that a child is insured increases significantly when their parents are insured.¹⁶⁹ And insurance coverage is associated with greater access to critical acute and preventive care, including vaccinations and well visits, for parents and children alike.¹⁷⁰ Programs such as housing assistance are received by a family, not an individual—if parents lose access to safe and stable housing, their children do too.

Based on the definition of public charge laid out in §212.21 of the proposed rule, researchers estimate that between 2.1 million and 4.9 million Medicaid/CHIP enrollees in immigrant families—including 875,000 to 2 million citizen-children—would disenroll from health coverage despite remaining eligible.¹⁷¹ Another analysis estimates as many as 628,000 children could disenroll from public health insurance coverage in California alone, increasing the state's child uninsurance rate from 3% to as high as 8.2%.¹⁷² Researchers at the Boston Medical Center found that, among eligible immigrant families who have been in the U.S. for less than five years, participation in SNAP decreased by nearly 10 percent in the first half of 2018—before the rule was even published or implemented.¹⁷³ As described in detail above, mass disenrollment of this nature is incredibly concerning in light of what we know about how important these programs are in promoting children's health and wellbeing.

Loss of public benefits will be detrimental to families' economic security, with lasting impacts on children's

Attainment of Their Children," *Soc Sci Med* 75

(2012)<https://www.sciencedirect.com/science/article/pii/S0277953612003966?via%3Dihub>.

¹⁶⁹ Jennifer E. DeVoe, Courtney Crawford, Heather Angier, et al., "The Association Between Medicaid Coverage for Children and Parents Persists: 2002-2010," *Matern Child Health J* 19 (2015),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4864606/>; Julie L. Hudon and Asako S. Moriya, "Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children," *Health Affairs* 36 (2017),

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347>; Joan Alker and Alisa Chester, *Children's Health Insurance Rates in 2014: ACA Results in Significant Improvements*, Georgetown University Health Policy Institute, Center for Children and Families, 2015, <http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf>.

¹⁷⁰ Stacey McMorrow, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," *Health Affairs* (2017),

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1650>; Maya Venkataramani, Craig Evan Pollack, and Eric T. Roberts, "Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services," *Pediatrics* 140 (2017),

<http://pediatrics.aappublications.org/content/140/6/e20170953>; Michael Karpman, Jason Gates, Stacey McMorrow, et al., "Uninsurance among Parents, 1997-2014: Long-Term Trends and Recent Patterns," Urban Institute, 2016, <https://www.urban.org/research/publication/uninsurance-among-parents-1997-2014-long-term-trends-and-recent-patterns>.

¹⁷¹ Samantha Artiga, Rachel Garfield, and Anthony Damico, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, Kaiser Family Foundation, 2018, <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

¹⁷² The Children's Partnership and KidsData.org, *Potential Effects of Public Charge Changes on California Children*, 2018, <https://www.childrenspartnership.org/wp-content/uploads/2018/11/Potential-Effects-of-Public-Charge-Changes-on-California-Children-FINAL-1.pdf>.

¹⁷³ American Public Health Association, "Study: Following 10-year gains, SNAP participation among immigrant families dropped in 2018," November 12, 2018, <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation>.

development.

Losing access to any one of these supports will also have a negative effect on a family's economic circumstances and increase material hardship. For millions of families, Medicaid and SNAP are lifelines that keep them living above the poverty threshold.¹⁷⁴ In fact, Medicaid has a larger effect on reducing child poverty than *all non-health means-tested programs combined*.¹⁷⁵ Without the programs and services that make food, housing, and/or health care more affordable and accessible, many families will be financially destabilized and potentially thrown into poverty. If parents lose access to affordable housing, they may also be at risk of losing their jobs.¹⁷⁶ And on top of being less able to keep their families fed and housed, they will have fewer resources to afford other essentials, including utilities, clothing, diapers, school supplies, transportation, and prescription medications.

The chronic, unrelenting stress and instability associated with immense financial hardship has immediate and lasting consequences on children's health and development, beginning even before a child is born.¹⁷⁷ Young children with low incomes are more likely to experience obesity, asthma, developmental delays, and poor mental health.¹⁷⁸ Disparities in cognitive and social-emotional skills between low- and higher-income children are evident as early as 9 months of age. By age 2, low-income toddlers have smaller vocabularies and demonstrate poorer skills in early literacy and numeracy.¹⁷⁹

These early disadvantages persist—and in some cases worsen—over time. Low-income children enter kindergarten up to a full year behind their higher-income peers in math and reading, and consistently score lower on measures of achievement and social-emotional skills over their academic careers.¹⁸⁰ As adolescents and young

¹⁷⁴ Karina Wagnerman, *Medicaid: How Does it Provide Economic Security for Families?* Georgetown University Health Policy Institute, Center on Children and Families, 2017, <https://ccf.georgetown.edu/2017/03/09/medicaid-how-does-it-provide-economic-security-for-families/>

¹⁷⁵ Dahlia K. Remler, Sanders D. Korenman, and Rosemary T. Hyson, "Estimating the Effects of Health Insurance and Other Social Programs on Poverty Under the Affordable Care Act," *Health Affairs* 36 (2017), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0331>.

¹⁷⁶ Matthew Desmond and Carl Gershenson, "Housing Employment Insecurity among the Working Poor," *Social Problems* 63 (2016), <https://academic.oup.com/socpro/article/63/1/46/1844105>.

¹⁷⁷ Center on the Developing Child, *The Science of Early Childhood Development*, Harvard University, <http://46y5eh11fhgw3ve3ytpwxt9r.wpengine.netdna-cdn.com/wp-content/uploads/2007/03/InBrief-The-Science-of-Early-Childhood-Development2.pdf>.

¹⁷⁸ Kay Johnson and Suzanne Theberge, *Reducing Disparities Beginning in Early Childhood*, National Center for Children in Poverty, 2007, http://www.nccp.org/publications/pdf/text_744.pdf.

¹⁷⁹ Tamara Halle, Nicole Forry, Elizabeth Hair, et al., *Disparities in Early Learning and Development: Lessons from the Early Childhood Longitudinal Study—Birth Cohort (ECLS-B)*, The Council of Chief State School Officers and Child Trends, 2009, http://www.elcmdm.org/Knowledge%20Center/reports/Child_Trends-2009_07_10_FR_DisparitiesEL.pdf; Annemarie H. Hindman, Barbara A. Wasik, and Emily K. Snell, "Closing the 30 Million Word Gap: Next Steps in Designing Research to Inform Practice," *Child Development Perspectives*, 2016, https://www.researchgate.net/profile/Barbara_Wasik/publication/301714377_Closing_the_30_Million_Word_Gap_Next_Steps_in_Designing_Research_to_Inform_Practice/links/572bd99308ae057b0a0958c7.pdf.

¹⁸⁰ Allison Freidman-Krauss, W. Steven Barnett, and Milagros Nores, "How Much Can High-Quality Universal Pre-K Reduce Achievement Gaps?," Center for American Progress, 2016, <http://nieer.org/wp-content/uploads/2017/01/NIEER-AchievementGaps-report.pdf>; Sean F. Reardon and Ximena A. Portilla, "Recent Trends in Income, Racial, and Ethnic School Readiness Gaps at Kindergarten Entry," *AERA Open* 2 (2016), <http://journals.sagepub.com/doi/abs/10.1177/2332858416657343>; Sean F. Reardon, "The Widening Achievement Gap between the Rich and the Poor: New Evidence and Possible Explanations," 2011,

adults, they have poorer mental health and are less likely to graduate from high school, to enroll in postsecondary education, and to earn a college degree.¹⁸¹ As adults, they experience greater unemployment, have lower incomes themselves, and are in poorer mental and physical health.¹⁸²

Children in immigrant families do not live in isolation. They live and grow up in communities where their individual success is critical to the strength of the country's future workforce and collective economic security. We need to invest in children, rather than put their healthy development and education at risk by destabilizing their families.

ii. Women's Health, Employment, and Economic Success Would Be Disproportionately Harmed by The Proposed Rule

The proposed rule would be particularly harmful to the economic security, health, and well-being of immigrant women, who make up more than half of the U.S. immigrant population.¹⁸³ Women's overall economic status, relative to men, is widely understood to be lower—as is their likelihood of being caregivers and living in larger households, relative to men—suggesting that the Department was aware in drafting the rule of the significant harm it would have on women. Immigrant women, especially those who are Black, Latina, and Asian American and Pacific Islander (AAPI), generally are at higher risk of economic insecurity than men because of pay disparities, discrimination, overrepresentation in low-wage work, and disproportionate responsibility for caregiving.

Across the board, women earn less than men on average.¹⁸⁴ Immigrant women face an even greater wage gap compared to native-born and naturalized men: foreign-born, noncitizen women, on average, earned 58 cents for every dollar earned by native-born men in 2015.¹⁸⁵ Immigrant women also earn less on average than US-born

<https://cepa.stanford.edu/sites/default/files/reardon%20whither%20opportunity%20-%20chapter%205.pdf>.

¹⁸¹ Gary W. Evans and Rochelle C. Cassells, "Childhood Poverty, Cumulative Risk Exposure, and Mental Health in Emerging Adults," *Clinical Psychological Science* 2(2013), <https://journals.sagepub.com/doi/abs/10.1177/2167702613501496>; Civic Enterprises and Everyone Graduates Center at Johns Hopkins University, "Building a GradNation: Progress and Challenge in Raising High School Graduation Rates," 2017, <http://gradnation.americaspromise.org/report/2017-building-grad-nation-report>; Drew DeSilver, "College Enrollment Among Low-Income Students Still Trails Richer Groups," FactTank, 2014, <http://www.pewresearch.org/fact-tank/2014/01/15/college-enrollment-among-low-income-students-still-trails-richer-groups/>; National Center for Education Statistics, "The Condition of Education: Postsecondary Attainment," 2016, https://nces.ed.gov/programs/coe/pdf/coe_tva.pdf.

¹⁸² Raj Chetty, Nathaniel Hendren, Frina Lin, et al., "Childhood Environment and Gender Gaps in Adulthood," Working Paper, NBER, 2016, http://www.equality-of-opportunity.org/images/gender_paper.pdf; Ye Luo and Linda J. White, "The Impact of Childhood and Adult SES on Physical, Mental, and Cognitive Well-Being Later in Life," *Journal of Gerontology, Psychological Sciences and Social Sciences* 60 (2005), <https://academic.oup.com/psychsocgerontology/article-lookup/doi/10.1093/geronb/60.2.S93>; Robert Lee Wagmiller and Robert M. Adelman, *Childhood and Intergenerational Poverty: The Long-Term Consequences of Growing Up Poor*, National Center for Children in Poverty, 2009, http://www.nccp.org/publications/pub_909.html.

¹⁸³ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute, February 8, 2018, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

¹⁸⁴ National Women's Law Center, *Frequently Asked Questions About the Wage Gap*, 2018, <https://nwlcciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/Wage-Gap-FAQ.pdf>; National Women's Law Center, *The Wage Gap: The Who, Why, How, and What to Do*, 2017, <https://nwlcciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017-2.pdf>.

¹⁸⁵ Elise Gould, Jessica Schieder, Kathleen Geier, *What is the Gender Pay Gap and Is It Real?*, Economic Policy Institute, 2016, <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

women.¹⁸⁶ Women collectively comprise two-thirds of the low-wage workforce¹⁸⁷ and immigrant women are overrepresented to an even greater extent in low-wage jobs.¹⁸⁸ Women are also more likely than men to raise children on their own, which means that low wages often result in an even lower household income (based on the number of household members).

Given widespread economic insecurity among women working in low-wage jobs, immigrant women are more likely to use the benefits proposed under the expanded definition of public charge than immigrant men. While immigrant women only make up a small share of public benefits recipients overall,¹⁸⁹ noncitizen women predominate among noncitizen recipients of income security programs. For example, in 2017, almost 47 percent of noncitizen Medicaid recipients were women (while 40 percent were men and 13 percent children).¹⁹⁰ Almost 48 percent of noncitizen recipients of SNAP benefits were women in 2017, compared to the 40 percent who were men and the 12 percent who were children.¹⁹¹ If immigrants are deterred from accessing Medicaid and SNAP—as they will surely be by the proposed rule—the result would be far greater economic insecurity among immigrant women and their families.

Moreover, the proposed rule’s unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women. Medicaid is a critically important program for women, meeting most of women’s health needs throughout their lives. Losing, disenrolling, or avoiding Medicaid coverage would put women’s health at risk. Without affordable health coverage, women will not get the health care they need. Women who have health coverage are more likely to receive preventive care, such as breast cancer and cervical cancer screenings.¹⁹² People with health insurance also have lower mortality rates.¹⁹³

¹⁸⁶ Institute for Women’s Policy Research, *Status of Women in the States: The Employment and Earnings of Immigrant Women, 2018*, <https://statusofwomensdata.org/immigrant-women/>.

¹⁸⁷ Kayla Patrick, Meika Berlan, Morgan Harwood, *Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade*, National Women’s Law Center, 2018, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf>.

¹⁸⁸ American Immigration Council, *The Impact of Immigrant Women on America’s Labor Force*, 2017, <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>; National Women’s Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs*, 2014, https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf.

¹⁸⁹ Noncitizen women constituted about 4 percent of all SNAP and Medicaid recipients in 2017. National Women’s Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren, Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>. This share is also roughly proportional to noncitizen women’s share of the population (3.3 percent in 2017).

¹⁹⁰ Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren, National Women’s Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using . Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

¹⁹¹ National Women’s Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

¹⁹² Munira Z. Gunja et al., *Women Gain Insurance and Improved Their Ability to Get Health Care*, The Commonwealth Fund, 2017, <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and>.

¹⁹³ Steffie Woolhandler, David U. Himmelstein, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly*, *Annals of Internal Medicine*, 2017, annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly.

When people do not have health coverage, they are more likely to forgo needed care, leading to worse health outcomes.¹⁹⁴ Half of uninsured women reported going without health care in 2016 because of cost, compared to 25 percent of women with Medicaid and 21 percent of women with private health insurance.¹⁹⁵ Already, immigrant women are less likely to be insured than their citizen counterparts¹⁹⁶ and the gap widens for poor immigrant women: nearly half (48 percent) of noncitizen women of reproductive age living in poverty are uninsured, compared to 16 percent of citizen women.¹⁹⁷ The proposed rule would only make the situation worse, leading to worse health outcomes for immigrant women and their children.

Moreover, as a result of fear and confusion created by the proposed rule, immigrant women may avoid health care services that are unconnected to Medicaid such as free or subsidized care at health centers. When women forgo medical care, including preventive reproductive health care, easily treatable illnesses or medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and even disability or death.¹⁹⁸ More specifically, this proposed rule may discourage women from obtaining prenatal care, which has ramifications not only for their health and their pregnancies, but also for birth outcomes (detailed further in the section below on pregnant women).¹⁹⁹

The proposed rule would also undermine women's employment and economic success. The proposed rule ignores the positive impact of public benefits in facilitating economic self-sufficiency. There is a large body of research demonstrating positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid. In particular, the use of these benefits often enables workers (especially those in the low-wage workforce) to remain employed.²⁰⁰ This is because it is difficult, if not impossible, for women working in such jobs to support themselves and their families on their wages alone. Thus,

¹⁹⁴ Committee on the Consequences of Uninsurance, *Care Without Coverage: Too Little, Too Late*, Institute of Medicine, 2002, <https://www.ncbi.nlm.nih.gov/pubmed/25057604>.

¹⁹⁵ Usha Ranji et al., *Overview: 2017 Kaiser Women's Health Survey*, Kaiser Family Foundation, 2018, <https://www.kff.org/report-section/executive-summary-2017-kaiser-womens-health-survey/>.

¹⁹⁶ Kaiser Family Foundation, *Women's Health Insurance Coverage*, 2017, <https://www.kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage-fact-sheet/>.

¹⁹⁷ Guttmacher Institute, *Dramatic Gains in Insurance Coverage for Women of Reproductive Age Are Now in Jeopardy*, 2018, <https://www.guttmacher.org/article/2018/01/dramatic-gains-insurance-coverage-women-reproductive-age-are-now-jeopardy>.

¹⁹⁸ Woolhandler, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly*; Rachel West, *Expanding Medicaid in All States Would Save 14,000 Lives Per Year*, Center for American Progress, 2018, <https://www.americanprogress.org/issues/healthcare/reports/2018/10/24/459676/expanding-medicaid-states-save-14000-lives-per-year/>; Committee on the Consequences of Uninsurance, *Care Without Coverage*; Adam Sonfield, *Beyond Contraception: The Overlooked Reproductive Health Benefits of Health Reform's Preventive Services Requirement*, Guttmacher Policy Review, 2012, <https://www.guttmacher.org/gpr/2012/10/beyond-contraception-overlooked-reproductive-health-benefits-health-reforms-preventive>.

¹⁹⁹ Megan M. Shellinger, et al., *Improved Outcomes for Hispanic Women with Gestational Diabetes Using the Centering Pregnancy Group Prenatal Care Model*, *Maternal and Child Health Journal*, 2016, <https://link.springer.com/article/10.1007/s10995-016-2114-x>.

²⁰⁰ See for example Matthew Desmond, Carl Gershenson, *Social Problems, Housing and Employment Insecurity among the Working Poor*, 2016, <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; National Women's Law Center, *Medicaid Is Vital for Women's Jobs in Every Community*, 2017, <https://nwc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/>; Center On Budget and Policy Priorities, *Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion*, 2018, <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid>.

the proposed rule's counting SNAP, non-emergency Medicaid, and housing assistance against women for the purposes of their immigration status may actually make it more difficult for immigrant women to be self-sufficient.

The inclusion of Medicaid and SNAP pose particular threats to pregnant women.

The proposed rule would create barriers to accessing care for pregnant immigrant women that could hasten the rise in maternal mortality and have serious health implications for their US citizen children. Prenatal, maternity, and newborn care is vital to monitor mothers' own health as well as the development of their babies. Routine care during pregnancy ensures that treatable but serious complications, such as gestational diabetes and preeclampsia, are identified and treated immediately. Prenatal care services also identify any problems with fetal development and ensure that pregnant women are getting the right nutrition to promote healthy growth. Adequate prenatal care is associated with reduced incidences of low birth weight, lower rates of infant and maternal mortality, and reduced risk of avoidable maternity complications. Medicaid coverage helps to ensure that pregnant women receive health care services necessary for a healthy birth.²⁰¹

In addition to access to prenatal care, nutrition assistance also helps promote healthy birth outcomes. Researchers compared the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s and found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birth-weight babies.²⁰²

If pregnant women avoid medical care and nutrition services out of fear, the negative outcomes would extend decades into the future, diminishing their children's opportunity to thrive in tangible and entirely preventable ways.²⁰³ Low-income women are already more likely to have poorer nutrition and greater stress, which can impair fetal brain development and health during pregnancy.²⁰⁴ Economic stressors, combined with inadequate prenatal care for low-income pregnant women, are associated with higher rates of pre-term births and infant mortality.²⁰⁵ A lack of adequate health care, including prenatal care, would contribute to higher rates of maternal mortality,

²⁰¹ Laura R. Wherry, "State Medicaid Expansions for Parents Led to Increased Coverage and Prenatal Care Utilization among Pregnant Mothers," *Health Services Research*, 53 (2018), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1475-6773.12820>

²⁰² Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; and Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, <https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf>.

²⁰³ Sharon Parrot, et al., *Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children*, Center on Budget and Policy Priorities, (May 1, 2018), available at <https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant>.

²⁰⁴ Tess Lefmann, Terri Combs-Orme, "Prenatal Stress, Poverty, and Child Outcomes," *Child and Adolescent Social Work Journal* 31 (2014), <https://link.springer.com/article/10.1007/s10560-014-0340-x>.

²⁰⁵ Maternal and Child Health Bureau, *Child Health USA 2014: Prenatal Care*, Health Resources and Services Administration, 2014, <https://mchb.hrsa.gov/chusa14/health-services-financing-utilization/prenatal-care.html>; Maternal and Child Health Bureau, *Child Health USA 2013: Barriers to Prenatal Care*, Health Resources and Services Administration, 2014, <https://mchb.hrsa.gov/chusa13/health-services-utilization/p/barriers-to-prenatal-care.html>; Centers for Disease Control and Prevention, *Preterm Birth*, 2016, <https://www.cdc.gov/reproductivehealth/MaternalInfantHealth/PretermBirth.htm>; Child Trends, *Preterm Births*, 2015, <https://www.childtrends.org/indicators/preterm-births/>.

higher rates of infant mortality, and increased risk of low-infant birth weight.²⁰⁶ Losing access to affordable prenatal care would be particularly dangerous for Black women, who already experience disproportionately high rates of maternal mortality at all income levels due in part to existing barriers to health care and systemic inequalities.²⁰⁷

Similarly, the proposed rule may also discourage women from seeking postpartum care, which is crucial to the health and well-being of mothers, newborns, and families.²⁰⁸ Forgoing postpartum care could mean that women endure postpartum depression without proper medical, social, and psychological care, skip doctor's visits that address infant feeding, nutrition, physical activity and family planning, or leave other postpartum health issues unaddressed--all of which can result in poor health outcomes.

With maternal mortality on the rise, a bipartisan group of Senators support increasing federal funding to expand access to services that can prevent maternal death.²⁰⁹ The proposed rule flies in the face of this effort to improve maternal and child health. What's more, it runs counter to evidence cited in previous versions of Field Guidance on Public Charge, which included detailed accounts of pregnant women with gestational diabetes terrified of seeking care and farmworker women afraid to enroll in a state-funded perinatal case management program.²¹⁰

iii. Young Adults Will Lose Access to Higher Education and Career Pathway Opportunities

The increased fear and confusion generated by the proposed rule will deter immigrant young adults from applying for federal and state-funded student financial aid programs and from applying to college altogether, which will reduce their prospects for improved economic outcomes. Research studies have shown that a postsecondary education can increase economic mobility and improve lives.²¹¹ Over a career, an average high school graduate earns at least \$1.4 million; an Associate's degree earns at least \$1.8 million, and a bachelor's degree holder earns \$2.5 million; a master's degree holder earns \$2.9 million; and a PhD holder earns \$3.5 million; and a professional degree earns at least \$4 million.²¹² Furthermore, research has found that a college degree improves health

²⁰⁶ Christine T. Loftus, Orion T. Stewart, Mark D. Hensley, et al., "A Longitudinal Study of Changes in Prenatal Care Utilization Between First and Second Births and Low Birth Weight," *Maternal and Child Health Journal* 19 (2015), <https://rd.springer.com/article/10.1007%2Fs10995-015-1783-1>; Sarah B. Laditka, James N. Laditka, Melanie P. Mastanduno, et al., "Potentially Avoidable Maternity Complications: An Indicator of Access to Prenatal and Primary Care During Pregnancy," *Women and Health* 41 (2005), http://www.tandfonline.com/doi/abs/10.1300/J013v41n03_01.

²⁰⁷ National Partnership for Women and Families, *Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities*, 2018, <http://www.nationalpartnership.org/research-library/maternal-health/black-womens-maternal-health-issue-brief.pdf>.

²⁰⁸ The American College of Obstetricians and Gynecologists, *Ob-Gyns Stress the Importance of Postpartum Care: The Fourth Trimester*, 2016, <https://www.acog.org/About-ACOG/News-Room/News-Releases/2016/Ob-Gyns-Stress-the-Importance-of-Postpartum-Care-The-Fourth-Trimester?IsMobileSet=false>.

²⁰⁹ Nina Martin, U.S. Senate Committee Proposes \$50 Million to Prevent Mothers Dying in Childbirth (June 28, 2018), <https://www.propublica.org/article/us-senate-committee-maternal-mortality-prevention-proposal>

²¹⁰ Note: The following report is an example of the date that was collected and shared at the time the Field Guidance was written. Claudia Schlosberg, National Health Law Program, and Dinah Wiley, National Immigration Law Center, "The Impact of INS Public Charge Determinations on Immigrant Access to Health Care," (May 22, 1998), <https://www.montanaprobono.net/geo/search/download.67362>.

²¹¹ Department of the Treasury and the Department of Education, *The Economics of Higher Education*, 2012, https://www.treasury.gov/connect/blog/Documents/20121212_Economics%20of%20Higher%20Ed_vFINAL.pdf.

²¹² Anthony P. Carnevale, *Reauthorizing the Higher Education Act: Accountability and Risk to Taxpayers, Testimony Before the*

status.²¹³ Post-secondary education also improves prospects for employment; since 2008, the majority of the new jobs created in the economy are going to college-educated individuals.²¹⁴

The proposed rule will also make it more difficult for low-income students to remain in school full-time if they are afraid to access programs that support their physical, mental and financial wellbeing. Health, nutrition and housing benefits help young adults to complete higher levels of education that prepare them for higher-paying jobs and to meet the needs of our nation's employers. For example, a recent study found that food insecurity negatively impacts first-year university students' academic performance, even after adjusting for high school academic performance and socioeconomic background.²¹⁵

To treat such benefits as a negative factor in a public charge assessment is contrary to the purpose of the public charge statute. In 2016, 710,000 immigrant young adults had Medicaid, which is 22.7% of all immigrant young adults and 11.3% of all young adults receiving Medicaid; and 446,000 immigrant young adults received SNAP, which is 14.5% of all immigrant young adults.²¹⁶ In addition, 45,000 immigrant young adults were in a household that received Housing Assistance.²¹⁷

By contributing to fewer individuals with post-secondary degrees, the proposed rule undermines our nation's global competitiveness. A highly-educated workforce spurs economic growth and strengthens state and local economies.²¹⁸ The chilling effect of this rule will discourage immigrant young adults from acquiring postsecondary degrees and credentials and pursuing areas of national need, including the fields of science, technology, engineering, and mathematics (STEM). In short, the public charge proposal would weaken the STEM educational pipeline and thwart efforts to increase educational attainment levels.

Like their peers, immigrant young adults deserve an opportunity to access an affordable, postsecondary education and to contribute their knowledge, skills, and talents to our nation's workforce and economy. Immigrant young adults also enrich the racial and cultural diversity of our nation's college campuses. By acquiring a postsecondary education and applying their skills in the workforce, they strengthen our nation's economy and global competitiveness.

b. The Proposed Criteria for Public Charge Inadmissibility Determinations Disproportionately Disadvantage Immigrant Children, Immigrant Women, and Parents of Young Children

Section 212.21 of the proposed rule further outlines specific standards for income, health, English language

Committee on Health, Education, Labor and Pensions, U.S. Senate, 2018

<https://www.help.senate.gov/imo/media/doc/Carnevale2.pdf>.

²¹³ Centers for Disease Control and Prevention, *Higher Education and Income Levels: Keys to Better Health*, 2012, https://www.cdc.gov/media/releases/2012/p0516_higher_education.html.

²¹⁴ Robert Shapiro, *The New Economics of Jobs is Bad News for Working-Class Americans and Maybe for Trump*, Brookings Institute, 2018, <https://www.brookings.edu/blog/fixgov/2018/01/16/the-new-economics-of-jobs-is-bad-news-for-working-class-americans-and-maybe-for-trump/>.

²¹⁵ Irene van Woerden et al., "Food Insecurity Negatively Impacts Academic Performance." *J Public Affairs* (2018). <https://doi.org/10.1002/pa.1864>.

²¹⁶ U.S. Census Bureau, *Current Population Survey: 2016*, <https://www.census.gov/programs-surveys/cps/data-detail.html>.

²¹⁷ U.S. Census Bureau, *Current Population Survey: 2016*, <https://www.census.gov/programs-surveys/cps/data-detail.html>.

²¹⁸ Noah Berger and Peter Fisher, *A Well-Educated Workforce is Key to State Prosperity*, Economic Policy Institute, 2013, <https://www.epi.org/press/states-investing-education-key-economic/>.

proficiency, and other factors that officials will consider during public charge determinations. These standards place significant weight upon factors that overwhelmingly disadvantage immigrant children in low-income families seeking to adjust their own status. Moreover, these standards would make it difficult for low-income women and immigrant parents to obtain permanent status and achieve long-term stability for their families.

A recent analysis of recent green card holders found that the rule would disproportionately affect women and children, making it more difficult for them to pass the public charge test. Specifically, the study found that women comprised 70 percent of the population of recent green card holders that were unemployed and not enrolled in school, often due to the need to stay at home with children due to the high cost of child care.

Immigrant Children

The vast majority of children in immigrant families in the U.S. are citizens, and therefore not subject to the proposed changes to the public charge test. However, a small number of children who would be affected—as immigrants themselves—would find their chances of being approved for lawful permanent residency disproportionately harmed by the inadmissibility determination criteria laid out in §212.22. For example, the following factors would count negatively towards an immigrant child’s public charge determination:

- **Age:** In the preamble to §212.22, DHS states that it intends to consider an immigrant’s age “primarily in relation to employment or employability” (p. 51179). Given that “children under the age of 18 generally face difficulties working full-time” (p. 51180), DHS proposes to consider being age 18 or younger a negative factor in the totality of circumstances.
- **Public benefit receipt:** While immigrant children have lower rates of access to programs like SNAP and Medicaid compared to U.S.-born children, they participate in these programs at much higher rates than immigrant adults.²¹⁹ DHS acknowledges this in the discussion of the totality of circumstances. Essential health, nutrition and housing assistance prepares children to be productive, working adults. Counting it as a negative factor in the public charge assessment is contrary to the purpose of the public charge ground of inadmissibility and unfairly bases a child’s future potential for self-sufficiency on their use of benefits as a child which runs contrary to the research that shows that access health and nutrition assistance improve children’s educational attainment and other developmental outcomes.²²⁰ In fact—as described above—access to these benefits in childhood can prevent the need for benefits in the future as children will be able to grow up into healthier more productive adults.
- **Household income:** Children in immigrant families are more likely to be low-income, comprising 30 percent of low-income children in the United States, despite their parents being more likely to be employed.²²¹

The proposed rule increases the extent to which immigrant children who are subject to the public charge test may

²¹⁹ Alex Nowrasteh and Robert Orr, *Immigration and the Welfare State*, CATO Institute, 2018, <https://object.cato.org/sites/cato.org/files/pubs/pdf/irpb6.pdf>.

²²⁰ Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, University of California, Davis, 2017, https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf

²²¹ The Annie E. Casey Foundation, *KIDS COUNT Data Book*, Children living in Low-Income Families (below 200 percent of the poverty threshold) by family nativity, 2018, <https://www.aecf.org/resources/2018-kids-count-data-book/>.

be denied lawful permanent residence. A recent study by the Migration Policy Institute found that, among recent green-card applicants, about 45 percent of children had two or more negative factors under the proposed standards, including age, lack of employment, and a higher likelihood of living in poverty.²²² Being denied lawful permanent status will be to the detriment of children’s long-term well-being and success. Similar to the research on parents’ access to legalization and economic mobility, it is well documented that providing immigrant children with the stability of legal status, particularly before they reach adulthood, can help improve their physical and mental health as well as their educational and workforce outcomes. For example, studies on the Deferred Action for Childhood Arrivals (DACA) program show that DACA has enabled immigrant youth to receive higher paying jobs than their undocumented peers, with their incomes increasing 69 percent after receiving DACA.²²³ Similarly, DACA helped beneficiaries improve their educational attainment by removing barriers to postsecondary education, with nearly half currently enrolled in school or post-secondary education, including 72 percent that are pursuing a Bachelor’s degree or higher.²²⁴ In addition to poorer educational and job outcomes, research also shows that children and youth who are not able to secure the stability of long-term lawful status before adulthood face significant mental health risks associated with the stresses of living without status.²²⁵

Immigrant Women

Women comprise a large share of those seeking green cards and stand to be disproportionately negatively impacted by the proposed changes to the “totality of circumstances” test:

- **Income:** In 2017, approximately 27 percent of noncitizen women lived below 125 percent FPL (compared to 23 percent of noncitizen men).²²⁶ Immigrant women are overrepresented among low-wage workers: one-third of immigrant women work in the low-wage service sector, making them more likely to live in poor or low-income households despite being employed.²²⁷
- **Household size:** More than half of all immigrant women live in a household with children, compared to 43 percent of immigrant men and 28 percent of native-born women.²²⁸
- **Benefit use:** Immigrant women have greater rates of benefit receipt compared to other noncitizens.²²⁹ This is largely driven by women having lower incomes and being more likely to have children in the home.²³⁰

²²² Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, “Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration,” Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

²²³ Tom K. Wong, Greisa Martinez Rosas, Adam Luna, Henry Manning, Adrian Reyna, Patrick O’Shea, Tom Jawetz, and Philip E. Wolgin, “DACA Recipients’ Economic and Educational Gains Continue to Grow,” Center for American Progress, August 28, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/>.

²²⁴ “Who are the Dreamers?,” American Council on Education, 2017, <https://www.acenet.edu/Pages/Protect-Dreamers-Higher-Education-Coalition.aspx#tabContent-3>.

²²⁵ Roberto G. Gonzales, Carola Suárez-Orozco and Maria Cecilia Dedios-Sanguineti. “No Place to Belong: Contextualizing Concepts of Mental Health Among Undocumented Immigrant Youth in the United States.” *American Behavioral Scientist*, published online 24 May 2013, DOI: 10.1177/0002764213487349.

²²⁶ U.S. Census Bureau, 2018 Current Population Survey, CPS Table Creator, <https://www.census.gov/cps/data/cpstablecreator.html>.

²²⁷ Ariel G. Ruiz, Jie Zong, Jeanne Batalova, *Immigrant Women in the United States*, Migration Policy Institute, 2015, <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

²²⁸ Ariel G. Ruiz, Jie Zong, and Jeanne Batalova, *Immigrant Women in the United States*, Migration Policy Institute, 2015, <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

- **Employment:** Overall, immigrant women participate in the workforce at a rate comparable to that of native-born women (56 percent versus 59 percent, respectively).²³¹ However, immigrant *mothers* are much more likely to stay at home with their children: in 2012, an estimated 40 percent of immigrant mothers stayed at home, compared to 25 percent of native-born mothers.²³²

A recent study by the Migration Policy Institute found that women may be more likely to be denied their green cards under the proposed rule because, as compared to immigrant men, they are less likely to be employed, more likely to be primary caregivers for children and family members, more likely to live in larger households, and more likely to have lower incomes.²³³ In fact, among recent green card recipients, women comprised 70 percent of those not employed nor enrolled in school.²³⁴ A study by the Kaiser Foundation found that among noncitizens who originally entered the United States without LPR status, women were more than twice as likely to have characteristics that DHS could potentially consider as heavily weighted negative factors in a public charge determination (59 percent of women vs. 27 percent of men).²³⁵

Therefore, immigrant women are more likely to be deemed a public charge based on negative factors and thus denied legal permanent residency as compared to immigrant men—a disproportionate impact clearly established by the Department’s proposed criteria. Given that women are also more likely to be the primary caregivers of children, a consequence of these proposed changes could be increased economic instability—and potentially family separation—among millions of households with children (the consequences of which are detailed further below).

Immigrant Parents with Young Children

The public charge test would penalize immigrant parents based on the following negative factors.

- **Family size:** Having one or more child in the household counts against an individual.
- **Income:** Families with children have lower overall household incomes, particularly those with young children.²³⁶

²²⁹ National Women’s Law Center calculations based on U.S. Census Bureau, 2017 Current Population Survey, using Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset]. Minneapolis, MN: IPUMS, 2018. <https://doi.org/10.18128/D030.V6.0>.

²³⁰ Pew Charitable Trusts, *Mapping Public Benefits for Immigrants in the States*, 2014, <https://www.pewtrusts.org/~media/assets/2014/09/mappingpublicbenefitsforimmigrantsinthestatesfinal.pdf>.

²³¹ Ariel G. Ruiz, Jie Zong, and Jeanne Batalova, *Immigrant Women in the United States*, Migration Policy Institute, 2015, <https://www.migrationpolicy.org/article/immigrant-women-united-states>.

²³² D’Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers*, Pew Research Center, 2014, <http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/>.

²³³ Randy Capps, Mark Greenberg, Michael Fix, Jie Zong, *Gauging the Impact of DHS’s Proposed Public Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

²³⁴ Capps, *Gauging the Impact of DHS’ Proposed Public Charge Rule*.

²³⁵ Samantha Artiga, Rachel Garfield, Anthony Damico *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* Kaiser Family Foundation, 2018, <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

²³⁶ Amy Traub, Robert Hiltonsmith, Tamara Draut, “The Parent Trap: The Economic Insecurity of Families With Young

- **Public benefit use:** Families with children are more likely to receive or have received public benefits.
- **Employment:** Immigrant parents with young children face particular barriers to employment related to the cost of child care. However, the proposed standards lay out an expectation that low-income immigrants will be constantly employed, ignoring the challenges that parents face in balancing employment with caregiving duties and the immense economic benefit of unpaid care work. As described above, a substantial share of immigrant women are stay-at-home mothers.²³⁷ These mothers would be penalized in a public charge determination for choosing to stay at home.

One study found that among noncitizens who originally entered the United States without LPR status, parents were nearly twice as likely to have a characteristic that could be considered a heavily weighted factor (65 percent vs. 34 percent).²³⁸ The increased likelihood that low-income immigrant parents will fail the public charge test means many more will be denied lawful permanent residency, which has negative consequences for entire families, particularly children. The inability of parents to secure permanent legal residency means they will be at risk of losing their lawful status, leaving them unable to establish long-term stability and economic mobility for themselves and their families. Research shows that lawful status helps immigrant parents secure better paying jobs and reduces the stress associated with exploitative working conditions and the uncertainties of living without lawful status--the benefits of which are passed down to children, leading to better short-term and long-term outcomes.²³⁹ One study showed that children whose parents were able to obtain lawful status under the 1986 immigration laws were able to achieve higher levels of education and higher paying jobs than those whose parents were not able to adjust status.²⁴⁰

Conversely, the inability of parents to obtain lawful permanent status under the proposed rule means that they will be at risk of falling out of lawful status and consequently becoming deportable, creating additional stress, impeding economic mobility, and reducing access to critical services--all consequences which again trickle down to their children. Children with undocumented immigrant parents face increased economic hardship and developmental challenges due to their parents' higher levels of poverty, lower levels of education, and higher likelihood to work in low-wage, unstable jobs without paid time off.²⁴¹ Extensive research also shows that parental detention and deportation harms a child's mental and physical health, economic security, and educational outcomes.²⁴² For example, a parent's deportation can drastically undercut the economic security of families

Children," Demos, December 13, 2016,

<https://www.demos.org/publication/parent-trap-economic-insecurity-families-young-children>.

²³⁷ D'Vera Cohn, Gretchen Livingstone, and Wendy Wang, *After Decades of Decline, a Rise in Stay-At-Home Mothers*, Pew Research Center, 2014, <http://www.pewsocialtrends.org/2014/04/08/chapter-2-stay-at-home-mothers-by-demographic-group/>.

²³⁸ Artiga, *Estimated Impacts of the Proposed Public Charge Rule*.

²³⁹ Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, "The Social Mobility of Immigrants and Their Children," Migration Policy Institute, June 2009, <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>.

²⁴⁰ Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, "Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories," Stanford Center on Poverty and Inequality, April 2013, https://inequality.stanford.edu/sites/default/files/media/media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

²⁴¹ Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, August 2012, <https://www.tandfonline.com/doi/abs/10.1080/10705422.2012.699714>.

²⁴² Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration*

already struggling to make ends meet, especially when that parent is the primary or sole breadwinner. One study estimates that the sudden loss of a deported parent's income can reduce a family's household income by 73 percent.²⁴³ Research also shows that the fear alone of possibly losing a parent to deportation can contribute to the toxic stress experienced by children in mixed legal status families. One study found that nearly 30 percent of children with one or more undocumented parent reported being afraid nearly all or most of the time, and three-quarters of undocumented parents reported their children were experiencing symptoms of post-traumatic stress disorder (PTSD).²⁴⁴

c. The rule imposes major damage on citizen children, despite saying that they are not included.

This rule effectively creates a second class of children who are less likely to access health, nutrition and housing programs. Simply because of their parents' nativity and economic status, millions of U.S.-born children will be denied the ability to achieve their full potential. Ultimately, the rule is internally contradictory: it claims to exempt citizen-children, but in fact evidence shows that many provisions will be detrimental to their health and well-being, and that it is impossible to impose such a radical change in the public charge definition without affecting citizen-children.

Because the vast majority of children in immigrant families were born in the U.S., any negative outcomes that children experience as a result of the proposed rule—through loss of benefits, heightened economic insecurity and material hardship, and increased likelihood that their parents will be denied lawful permanent status—will disproportionately fall on U.S. citizens. Estimates show that more than 9 million children, the majority of whom are U.S. citizens, may be negatively impacted by the proposed changes.²⁴⁵ Yet the Department's analysis falls short of acknowledging the many ways in which citizen-children could be adversely affected by its proposed changes.

- i. Research shows that immigrant parents will withdraw their children from benefits out of fear—yet the Department is dramatically underestimating the extent of the “chilling effect” for citizen-children.

In the preamble to the rule and cost-benefit analysis, the Department acknowledges an anticipated “chilling effect,” whereby immigrants and their household members—including children—are likely to “disenroll from or

Enforcement, The Urban Institute, 2010, <http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PDF>; Brian Allen, Erica M. Cisneros, Alexandra Tellez, “The Children Left Behind: The Impact of Parental Deportation on Mental Health,” *Journal of Child and Family Studies* 24 (2015), <https://link.springer.com/article/10.1007/s10826-013-9848-5>; Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., “The Distress of Citizen-Children with Detained and Deported Parents,” *Journal of Child and Family Studies* 24 (2015), . <https://link.springer.com/article/10.1007%2Fs10826-015-0124-8>.

²⁴³ Randy Capps, Heather Koball, James D. Bachmeier, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, MPI, 2016, <http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effectsfamilies>.

²⁴⁴ Sara Satinsky, Alice Hu, Jonathan Heller, et al., *Family Unity, Family Health: How Family Focused Immigration Reform Will Mean Better Health for Children and Families*, Human Impact Partners, 2013, <http://www.familyunityfamilyhealth.org/>.

²⁴⁵ 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>.

forgo enrollment in public benefits programs, even if they remain legally eligible.” This is, in fact, a feature of the rule, and the primary way that DHS anticipates cost savings as a result. DHS explicitly states that the proposed rule would “result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as *U.S. citizens who are members of mixed-status households.*” (emphasis added)

The Department bases their analysis on previous research conducted following the implementation of PRWORA, including findings that enrollment in public benefits by foreign-born headed households fell by about 21 percent between 1994-1997.²⁴⁶ However, the Department’s consideration of potential impacts of the proposed rule in general is limited at best, and it dramatically underestimates the extent and damage of the “chilling effect” that will result, including the long-term developmental harm to citizen-children. It also fails to recognize the additional fear and stress that immigrant families are experiencing as a result of the constant anti-immigrant rhetoric being perpetuated by the Administration and numerous federal immigration policy changes, including increased immigration enforcement in the interior of the United States that has also targeted immigrant parents.

The cost-benefit analysis in the rule is based on the flawed assumption that the “population likely to disenroll from or forego enrollment in public benefits programs would be individuals intending to apply for adjustment of status or those who have adjusted status within the past five years.” It also assumes a lesser chilling effect than that which followed the implementation of PROWA, stating that “PROWA was directly changing eligibility requirements, whereas this proposed rule, if finalized, would change enrollment incentives.” As such, the Department bases its estimates of potential disenrollment at 2.5 percent of the number of foreign-born noncitizens seeking to adjust status, which we believe to be a gross underestimate based on previous research regarding PROWA and recent studies on immigrants’ reluctance to access benefits in the current political climate. It is also important to note that previous studies on PROWA found that much of chilling effect was caused by confusion regarding the new eligibility rules, and confusion is likely to continue to contribute to the chilling effect created by this rule as has already been documented.

In reality, we know that entire families, including U.S. citizen children, are withdrawing from services, *even services not included in the proposed rule.* Much of this chilling effect has been a result of the onslaught of anti-immigrant policy changes from the Administration, including the 2017 immigration executive order that increased immigration enforcement measures in the interior of the United States and removed enforcement priorities that provided protection for certain parents of citizen children, as well as several other categories of immigrants.²⁴⁷ As detailed above, CLASP conducted research between May and December of 2017 based on interviews with early childhood and community-based social service providers in 6 states, and providers consistently shared that parents were refusing to enroll or disenrolling in programs like SNAP, WIC, and Medicaid and refusing early

²⁴⁶ Michael Fix, Jeffrey Passel, *Trends in Noncitizens’ and Citizens’ Use of Public Benefits Following Welfare Reform: 1994-1997*, The Urban Institute, 1999, <https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform>.

²⁴⁷ The White House Office of the Press Secretary, "Executive Order: Enhancing Public Safety in the Interior of the United States," 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

intervention services.²⁴⁸ The study was conducted during 2017, long before the public charge rule was published in the federal register, demonstrating the significant chilling effect created by rumors and misinformation, including alarm associated with previously leaked versions of the proposed rule. A national study by the Kaiser Family Foundation and a California-based study conducted by The Children’s Partnership and the California Immigrant Policy Center, both conducted prior to publication of the proposed rule, also found that immigrant families-- including those with lawful status--were experiencing high levels of fear and anxiety leading to decreased enrollment and disenrollment of their children in basic health and nutrition programs.²⁴⁹

The fear and anxiety prevalent among immigrant communities is likely to continue given the ongoing uncertainty created by federal immigration policy proposals – such as this proposed rule on public charge, the 2017 immigration executive orders on immigration enforcement, removing protections for Temporary Protected Status holders and beneficiaries of the Deferred Action for Childhood Arrivals (DACA) – all of which destabilize immigrant families and inhibit their ability to provide and care for their children. We believe this heightened climate of fear will lead to an even greater chilling effect than that from the 1990s should this rule be finalized.

Thus, the rule has long-term implications for millions of our nation’s youngest citizens, denying them vital health care, nutritious food, housing, as well as other critical services that their parents may be reluctant to enroll them in despite their being eligible. Citizen-children are eligible for a broad range of benefits specifically designed to foster their healthy development in recognition of the importance of meeting their basic needs from birth through adulthood—not only for their own healthy development, but for the health and vitality of their communities, including the children they attend child care or school with. As a result, more than half the states have adopted policies to ensure that even noncitizen children—specifically those who are lawfully present immigrants—in their state have access to government funded low-cost, high-quality health care.²⁵⁰ As discussed previously, the link between access to benefits and a child’s future health and social outcomes is well documented. Receipt of health insurance, housing assistance, and nutrition assistance during childhood is associated with better health and educational outcomes and lower rates of material hardship, with benefits into adulthood.²⁵¹

²⁴⁸ Cervantes, *Our Children’s Fear*.

²⁴⁹ Samantha Artiga, Petry Ubri, *Living in An Immigrant Family in America: How Fear and Toxic Stress Are Affecting Daily Life, Wellbeing, and Health*, The Henry J. Kaiser Family Foundation, 2017, <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>; The Children’s Partnership and California Immigrant Policy Center, *Healthy Mind, Healthy Future: Promoting the Mental Health and Wellbeing of Children in Immigrant Families in California*, 2018, <https://www.childrenspartnership.org/wp-content/uploads/2018/08/Healthy-Mind-Healthy-Future-Report-Promoting-the-Mental-Health-and-Wellbeing-of-Children-in-Immigrant-Families.pdf>.

²⁵⁰ National Immigration Law Center, *Health Care Coverage Maps, 2018*, <https://www.nilc.org/issues/health-care/healthcoveragemaps/>.

²⁵¹ See for example, Chloe N. East, “The Effect of Food Stamps on Children’s Health: Evidence from Immigrants’ Changing Eligibility,” Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf; Karina Wagnerman, Alisa Chester, Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>; Aletha C. Huston, “U.S. Commentary: Effects of Housing Subsidies on the Well-Being of Children and Their Families in the Family Options Study,” *Cityscape: A Journal of Policy Development and Research* 19 (2017), <https://www.huduser.gov/portal/periodicals/cityscpe/vol19num3/ch15.pdf>.

- ii. There is a clear correlation between parents’ and children’s access to health care—and the harm done to children when their parents forego support for themselves.

Parents’ and children’s wellbeing is inextricably linked in many ways, including their access to benefits. While health insurance coverage is not the only support at stake as a result of the public charge rule, the connection between children’s and parents’ insurance status demonstrates how difficult it is to penalize parents without imposing harm on citizen-children.

Research focused on Medicaid expansion consistently shows that children are more likely to have insurance coverage when their parents are also insured, and that parents’ own receipt of health care services often dictates that of their children.²⁵² While citizen-children in immigrant families generally have lower rates of coverage compared to children with parents who are U.S.-born, this gap has been closing in recent years.²⁵³ Between 2008 and 2016, various policy changes prioritized investments toward outreach and enrollment for immigrant families, contributing to a significant increase in Medicaid and CHIP participation and a decline in the uninsurance rate among citizen-children with immigrant parent(s). The proposed rule threatens to undermine this progress, particularly for the 2.2 million Medicaid/CHIP-enrolled citizen-children whose have an immigrant parent also enrolled in Medicaid and who may experience a “reverse welcome mat” if their parent drops coverage.²⁵⁴

If parents themselves disenroll from or refuse to participate in Medicaid, forgo care from community health centers, and otherwise avoid other publicly funded programs and services that promote their health and wellbeing, it won’t just be their health that suffers. As described extensively above, children’s health and development is negatively affected by their parents’ untreated mental and physical health challenges.²⁵⁵ And loss

²⁵² Jennifer E. DeVoe, Courtney Crawford, Heather Angier, et al, “The Association Between Medicaid Coverage for Children and Parents Persists: 2002-2010,” *Matern Child Health J* 19 (2015),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4864606/>; Julie L. Hudon and Asako S. Moriya, “Medicaid Expansion for Adults Had Measurable ‘Welcome Mat’ Effects on Their Children,” *Health Affairs* 36 (2017),

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347>; Joan Alker and Alisa Chester, *Children’s Health Insurance Rates in 2014: ACA Results in Significant Improvements*, Georgetown University Health Policy Institute, Center for Children and Families, 2015, <http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf>.

²⁵³ Genevieve M. Kenney, Jennifer M. Haley, and Robin Wang, *Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains Among Citizen Children*, Urban Institute, 2018,

https://www.urban.org/sites/default/files/publication/99453/proposed_public_charge_rule_could jeopardize_recent_coverage_gains_among_citizen_children_0.pdf.

²⁵⁴ Genevieve M. Kenney, Jennifer M. Haley, and Robin Wang, *Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains Among Citizen Children*, Urban Institute, 2018,

https://www.urban.org/sites/default/files/publication/99453/proposed_public_charge_rule_could jeopardize_recent_coverage_gains_among_citizen_children_0.pdf.

²⁵⁵ Stephanie Schmit and Christina Walker, *Seizing New Policy Opportunities to Help Low-Income Mothers with Depression*, CLASP, 2016, www.clasp.org/resources-and-publications/publication-1/Opportunities-to-Help-Low-Income-Mothers-with-Depression-2.pdf; National Scientific Council on the Developing Child and National Forum on Early Childhood Program Evaluation, “Maternal Depression Can Undermine the Development of Young Children,” Center on the Developing Child, Harvard University, Working Paper 8, 2009, <http://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children/>; Stephen M. Amrok and Michael Weitzman, “Parental Psychological Distress and Children’s Mental Health: Results of a National Survey,” *Academic Pediatrics*, 14 (2014), [https://www.academicpediatrics.net/article/S1876-2859\(14\)00057-6/fulltext](https://www.academicpediatrics.net/article/S1876-2859(14)00057-6/fulltext); Colorado Health Institute, *The Link Between Parent and Child Mental Health in Colorado*, 2016,

https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/Final%20Brief_0.pdf.

of insurance imposes major financial strain on low-income families, who will then be even less likely to afford medical care and have to make trade-offs between doctor's visits, prescription medications, and other medical needs and basic essentials like housing, food, clothing, and diapers. This means many more citizen-children will be living in economic insecurity and may even be thrown into poverty. As a country with one of the highest child poverty rates²⁵⁶, we cannot afford to scare millions of citizen-children away from one of the most effective anti-poverty tools we have available.

- iii. Research consistently points to the importance of immigrant parents' long-term status for children's outcomes—but many more parents may be denied lawful permanent residency under the proposed standards.

Many of the provisions laid out in the proposed standards would inherently penalize immigrant parents, who are more likely to have caregiving duties that impede full-time employment; to work in low-wage jobs that perpetuate poverty *despite* working full time; and to have larger households that include dependent children. To the extent that the rule would lead to more low-income working parents failing the public charge test and being denied long-term status, citizen-children will also be penalized.

Without long-term lawful permanent residency, parents – and therefore their children – also lose the improved economic opportunities that come with lawful status such as more employment opportunities, higher wages, employer-sponsored health care, and access to other important benefits and income supports.²⁵⁷ As a result, the rule would strip access to improved economic mobility that can help parents lift their citizen children out of poverty and result in low-income immigrant families falling deeper into poverty to the detriment of their citizen children's healthy development.

Furthermore, by not being able to secure lawful permanent residency, parents who choose to remain in the United States would be at risk of becoming undocumented. Research has found that a parent's undocumented status can harm a child's well-being as undocumented immigrants have higher levels of poverty, lower levels of education, are disproportionately more likely to work in low-wage, unstable jobs without paid time off compared to legal residents and citizens, and are less likely to seek out critical benefits for their citizen children.²⁵⁸ Parents

²⁵⁶ Gonzalo Fanjul, *Children of the Recession: The Impact of The Economic Crisis on Child Well-Being in Rich Countries*, UNICEF, 2014, <https://www.unicef-irc.org/publications/733-children-of-the-recession-the-impact-of-the-economic-crisis-on-child-well-being-in.html>.

²⁵⁷ Demetrios G. Papademetriou, Madeline Sumpton, Will Somerville, *The Social Mobility of Immigrants and Their Children*, Migration Policy Institute, 2009, <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>; Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, *Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories*, Stanford Center on Poverty and Inequality, 2013, https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

²⁵⁸ Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*, 2011; Annette Bernhardt, Ruth Milkman, Nik Theodore, et al., *Broken Laws, Unprotected Workers*, Center for Urban and Economic Development, National Employment Law Project, UCLA Institute for Research on Labor and Employment, 2009, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1>; Krista M. Perreira, Robert Crosnoe, Karina Fortuny, et al., *Barriers to Immigrants' Access to Health and Human Services Programs*, Office of the Assistant Secretary for Planning and Evaluation, 2012, <http://webarchive.urban.org/UploadedPDF/413260-Barriers-to-Immigrants-Access-to-Health-and-Human-Services-Programs.pdf>; Sara Satinsky, Alice Hu, Jonathan Heller, et al., *Family Unity, Family*

who were once lawfully present would also be at risk of deportation, which research shows also creates significant harm to their children’s mental and physical health, as the constant worrying about deportation creates toxic stress.²⁵⁹ Children who have lost a parent to deportation often experience symptoms of PTSD and suffer from increased economic hardship—including crowded housing conditions, less access to food, and lower household income—particularly when the parent deported is the primary breadwinner.²⁶⁰ Parents who leave the United States—voluntarily or as a result of deportation—must make the difficult choice of whether to bring their citizen children with them to a country they have never known or leave them behind in the care of family or friends—both decisions which have dire consequences for children’s long-term development.²⁶¹

IV. THE PROPOSED REGULATION WOULD CAUSE MAJOR HARM TO COMMUNITIES, SCHOOLS, HEALTH CARE SYSTEMS, STATES, LOCALITIES, BUSINESSES AND HIGHER EDUCATION.

The impacts of the proposed regulation go far beyond individuals and families. Mass disenrollment from SNAP and Medicaid will have devastating economic ripple effects on communities nationwide. For example, when immigrants and their families are deterred by the rule from gaining access to Medicaid, the consequences for safety net hospitals and clinics are dire. When families lose Medicaid health coverage, hospitals and doctors lose income.

Disruption and costs to K-12 education are also a major concern. Inadequate nutrition, a lack of routine medical care, and unstable housing situations directly impact the health and wellbeing of students and educational outcomes. States and localities also suffer when they must deal with the public health and fiscal consequences when immigrants and their families choose to forego health care.

The rule will create new challenges for state and local agencies that administer health, nutrition, and housing programs. State and local agencies will face an increased workload to provide documentation of benefit receipt to green card applicants as required by draft from I-944, respond to consumer inquiries related to the new rule, and modify existing communications and forms related to public charge. Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to extend coverage to pregnant women and children and to streamline enrollment processes between different public assistance programs.

The proposed changes will also have a direct impact on businesses big and small, hurting workers across all wage ranges and damaging state and local governments’ ability to support their residents in achieving higher education and workforce policy goals. Particularly for low-wage workers, the proposed rule will destabilize their lives and

Health: How Family Focused Immigration Reform Will Mean Better Health for Children and Families, Human Impact Partners, 2013, <http://www.familyunityfamilyhealth.org/>.

²⁵⁹ Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., “The Distress of Citizen-Children with Detained and Deported Parents,” *Journal of Child and Family Studies* 24 (2015); Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 2010, <http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PD>.

²⁶⁰ <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families>

²⁶¹ Brian Allen, Erica M. Cisneros, and Alexandra Tellez, “The Children Left Behind: The Impact of Parental Deportation on Mental Health,” *Journal of Child and Family Studies* 24 (2015); IMUMI, *Where Do We Go From Here?* http://uf.imumi.org/recursos/where_challenges.pdf

will make it harder for them to sustain steady employment. When businesses lose workers, it disrupts industries and our economy suffers.

Finally, the fear and confusion generated by proposed rule could deter immigrant students from pursuing postsecondary education and deter foreign talent from pursuing education and employment opportunities in the U.S. For immigrant students already pursuing higher education opportunities, the proposed rule would undermine access to essential health, nutrition and other critical programs which would impact college campuses and impede state efforts to increase college completion rates.

a. Mass Disenrollment from SNAP and Medicaid Will Have Devastating Economic Ripple Effects on Communities Nationwide

The Fiscal Policy Institute models the economic and fiscal losses associated with the proposed public charge rule if 15, 25, and 35 percent of people currently receiving benefits who experience the chilling effect feel compelled to disenroll from two of the biggest supports – Medicaid and SNAP.²⁶²

If 15 to 35 percent of people disenrolled from SNAP and Medicaid, the Fiscal Policy Institute shows a loss of approximately \$7.5 billion to \$17.5 billion in health care and food supports. As a result of this money withdrawn from the economy, economic ripple effects would spread to businesses and workers. For instance, withdrawal from SNAP would mean a reduction in spending in grocery stores and supermarkets and, when families lose Medicaid health coverage, hospitals and doctors lose income. Further, when families struggle to pay food and health care costs, spending would be reduced in other areas. In total, the Fiscal Policy Institute shows a potential loss of approximately \$14.5 billion to \$33.8 billion due to economic ripple effects. Lastly, as businesses have less revenue, employers lay off workers. As a result of the economic loss, our nation stands to lose approximately 99,000 to 230,000 jobs.²⁶³

b. Harm to Schools: K-12

The proposed public charge rule would have a harmful impact on our nation’s schools. Superintendents, principals, teachers, nurses, counselors, and other school personnel can attest to the adverse effects of inadequate nutrition, a lack of routine medical care, and unstable housing situations on the educational outcomes and the health and wellbeing of students. These critical factors contribute to absenteeism, inattention in class, incomplete school work, poor health, and a decrease in access to a quality education. The proposed rule would drastically increase these barriers to education and undermine schools in their efforts to prepare all students, especially immigrant students, to be college and career ready.

Schools deliver health services effectively and efficiently to children since school is where children spend most of their day. Increasing access to health care services through Medicaid improves health care and educational outcomes for all students, including immigrant children. Providing health and wellness services for immigrant

²⁶² Fiscal Policy Institute “Only Wealthy Immigrants Need Apply: How A Trump Rule’s Chilling Effect Will Harm the U.S.” (New York, NY: FPI, 2018) <http://fiscalpolicy.org/public-charge>.

²⁶³ Fiscal Policy Institute “Only Wealthy Immigrants Need Apply: How A Trump Rule’s Chilling Effect Will Harm the U.S.” (New York, NY: FPI, 2018) <http://fiscalpolicy.org/public-charge>.

children who need through school-based Medicaid programs helps enable these children to become employable, attend higher-education and be productive contributors to American society.

The inclusion of Medicaid as a program that can disqualify someone from becoming a lawful permanent resident or maintaining a visa in the U.S. will have immediate repercussions for children's healthcare access inside and outside of school. While school-based services are excluded from impacting a child's future status in the U.S. by this regulation, school districts are already challenged in annually enrolling children into the Medicaid/CHIP program and obtaining parental consent that allows districts to be reimbursed by Medicaid for the direct healthcare services they provide children.

Since the news of the proposed regulations broke, some districts have reported that immigrant parents are proactively revoking consent for districts to bill Medicaid for costly services under the Individuals Disabilities Education Act (IDEA). Medicaid reimbursement for special education services is a critical funding source for school districts. Districts with large numbers of immigrant children will struggle to meet their commitments under IDEA if parents are scared to give their consent to billing Medicaid.

If this regulation is finalized, we expect a significant number of immigrant parents will refuse to consent to allowing districts to bill Medicaid for healthcare or special education expenses for their children. As a result, districts that rely on Medicaid to meet the healthcare and special education needs of immigrant children will have to dip into local dollars to continue ensuring immigrant children are healthy enough to learn and receive the special education services they are entitled to under IDEA. The loss of Medicaid funding will place a considerable burden on school districts to raise local revenue through taxes or reallocate existing local resources to fill the gaps left by substantial decreases in Medicaid reimbursement. If school districts are unable to raise new revenue, the loss of Medicaid funding could compromise educational quality and resources for all children regardless of immigration status or income level.

Research has shown that public health insurance coverage positively impacts education attainment.²⁶⁴ Public health coverage, which is mainly available through Medicaid, increases high school graduation rates.²⁶⁵ Without Medicaid, families will be forced to forego or delay doctors' visits, immunizations, and prescriptions. Forcing immigrant families to make such choices has a negative effect on entire classrooms, interrupting and delaying the learning of immigrant students and their peers.

To make matters worse, the threats to housing assistance in the proposed rule place added pressures on schools and increase stress levels for immigrant children and families. When children are in an unstable housing environment, their education suffers.²⁶⁶ The loss of federal housing assistance will increase the risk of students living in unsafe, overcrowded, and unstable housing. Housing instability, coupled with other stressors, results in

²⁶⁴ Sarah Cohodes et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions" 4, 5 & 23 National Bureau of Economic Research, Working Paper No. 20178, (2014), <https://www.nber.org/papers/w20178>.

²⁶⁵ Sarah Cohodes et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions" 4, 5 & 23 National Bureau of Economic Research, Working Paper No. 20178, (2014), <https://www.nber.org/papers/w20178>.

²⁶⁶ U.S. Department of Education, *Press Release: Education Department Releases Guidance on Homeless Children and Youth*, 2016, <https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth>; U.S. Department of Education, U.S. Department of Health and Human Services, *Dear Colleague Letter: Elementary and Secondary Education Act*, 2016, <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>.

high levels of stress on immigrant parents that can harm their children’s cognitive development and lower educational attainment.²⁶⁷

While parents do their best to shield their children from these realities, children inevitably absorb the stress as well. Severe parental stress of this kind affects a child’s brain development and capacity to learn.²⁶⁸ The proposed rule would only increase the risk that children will experience this often-irreversible harm.²⁶⁹ Both parents and pediatricians report that children are experiencing high levels of fear related to current immigration-related policies and rhetoric, which are negatively affecting their behavior and performance in school.²⁷⁰

We believe that all children, including immigrant children, deserve the fundamental security and health benefits provided by adequate food, health care, and housing to succeed in school and beyond. It is only with such vital supports in place that students can meaningfully engage at school and reach their greatest potential.

c. Harm to Health Care Systems: Immigrant’s Fears About Using Medicaid will Deprive Financially Vulnerable Safety Net Providers of Vital Revenue

Medicaid is an indispensable funding source for safety net hospitals and clinics, which are financially vulnerable. More than 35% of visits to safety-net hospitals are covered by Medicaid.²⁷¹ Medicaid is the single largest source of funding for community health centers in both Medicaid expansion and non-expansion states.²⁷² In California, where one of every two children has an immigrant parent, more than half of all children are enrolled in the state’s Medicaid program.²⁷³ In addition, some studies have found that immigrants constitute a low-risk population that

²⁶⁷ Hirokazu Yoshikawa, “Immigrants Raising Citizens Undocumented Parents and Their Young Children,” 2011, <https://www.tandfonline.com/doi/abs/10.1080/10705422.2012.699714>; Heather Sandstrom, Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis, Low-Income Working Families, Discussion Paper No. 3*, Urban Institute, 2013, <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

²⁶⁸ National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development Working Paper No. 9*, Center on the Developing Child at Harvard University, 2010, <https://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/>; Maya Rossin-Slater, “Promoting Health in Early Childhood,” *The Future of Children* vol 25 (2015.), <https://files.eric.ed.gov/fulltext/EJ1062947.pdf>.

²⁶⁹ American Academy of Pediatrics, “Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health,” Vol 129 *Pediatrics*, (2012), <http://pediatrics.aappublications.org/content/129/1/e224>; National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development*, 2010, <https://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf>.

²⁷⁰ Samantha Artiga and Petry Ubrí, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life.*, Kaiser Family Foundation, 2017, <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>.

²⁷¹ America’s Essential Hospitals, *Essential Data: Our Hospitals, Our Patients*, 2017, https://essentialhospitals.org/wp-content/uploads/2017/06/AEH_VitalData_2017_Spreads_NoBleedCropMarks.pdf.

²⁷² Julia Paradise, et al., *Community Health Centers: Recent Growth and the Role of the ACA*, Kaiser Family Foundation, 2017, <https://www.kff.org/report-section/community-health-centers-recent-growth-and-the-role-of-the-aca-issue-brief/>.

²⁷³ California Department of Health Care Services Research and Analytic Studies Division, *Proportion of California Population Certified Eligible for Medi-Cal By County and Age Group – September 2015, 2016*, http://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-Cal_Penetration_Brief_ADA.PDF. Note: pre-dates eligibility for children regardless of immigration status.

effectively subsidize the insurance market for U.S. born individuals.²⁷⁴

There is a direct relationship between the number of patients covered by Medicaid in a safety-net facility's service area and the facility's financial health. Community Health Centers in Medicaid expansion states have more locations, see more patients and have better provider to patient ratios as compared to non-expansion states.²⁷⁵ Studies confirm a strong relationship between Medicaid coverage and hospital closures, with hospitals in Medicaid expansion states 84% less likely to close than those in non-expansion states.²⁷⁶

The impacts of hospital closures are far-reaching. Hospital closures affect access to care for all residents of their service areas. A study of California hospitals found increased rates of deaths among inpatients in facilities located in hospital service areas where an emergency department had closed. Rates of death increased by 10 percent among nonelderly adults and 15 percent among patients who had heart attacks. The impact of hospital closure on access to care is particularly significant in rural communities, which generally have difficulty attracting health care providers and which providers often leave in the wake of a hospital closure.²⁷⁷ The effects of hospital closures extend beyond reduced access to healthcare and poorer health outcomes. Hospitals are major employers and purchasers of goods and services. The loss of jobs associated with a hospital closure is especially devastating in rural areas, which have smaller populations and a historic reliance on declining industries.²⁷⁸ Moreover, some industries and employers will not locate in an area without a hospital, leaving communities without hospitals unable to attract some employers.²⁷⁹

There are numerous immigrants in the healthcare workforce. Among home health aides, 25% are foreign-born and a third receive public benefits.²⁸⁰ If these workers forego health coverage, they will miss more days of work, burdening their employers and the vulnerable people for whom they provide care.²⁸¹ Moreover, it is accepted wisdom that there will be an increased need for home care workers as the U.S. population ages.²⁸² If candidates for these low-wage jobs are denied admission on public charge grounds, or are unable to extend/ change their nonimmigrant status due to low incomes, vulnerable seniors may be forced to leave their homes and receive more expensive care in nursing homes.

²⁷⁴ Lila Flavin, et al., "Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review," *International Journal of Health Services*, (2018), http://www.pnhp.org/docs/ImmigrationStudy_IJHS2018.pdf

²⁷⁵ Paradise, *Community Health Centers: Recent Growth*.

²⁷⁶ Richard Lindrooth et al., *Understanding The Relationship Between Medicaid Expansions And Hospital Closures*, Health Affairs, 2018 <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0976>.

²⁷⁷ Jane Wishner, Patricia Solleveld, et al., *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies*, Kaiser Family Foundation, 2016, www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care.

²⁷⁸ Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.

²⁷⁹ Wishner, *A Look at Rural Hospital Closures and Implications for Access to Care*.

²⁸⁰ Wendy E. Parmet, Elizabeth Ryan, *New Dangers For Immigrants And The Health Care System*, Health Affairs,, 2018, <https://www.healthaffairs.org/doi/10.1377/hblog20180419.892713/full> .

²⁸¹ Allan Dizioli, Roberto Pinheiro, "Health Insurance As a Productive Factor" *Labor Economics*, (2012), <https://pdfs.semanticscholar.org/998c/e59138c5ef43be4e20ed5f6fdb8900e34260.pdf>.

²⁸² E. Tammy Kim, *Americans Will Struggle to Grow Old At Home*, Bloomberg Businessweek, 2018, <https://www.bloomberg.com/news/features/2018-02-09/americans-will-struggle-to-grow-old-at-home> .

d. Harm to States and Localities: The Proposed Rule Would Effectively Override State Options to Extend Coverage and Impose Additional Health Care Costs on States

States largely support providing healthcare to all lawfully residing pregnant women and children. The 1996 welfare reform law limited eligibility for most federal benefits to a subset of lawfully present immigrants it deemed ‘qualified,’ and imposed a five-year bar to eligibility for most newly qualified immigrants. Legal and policy changes after 1996 allow states to extend eligibility for CHIP-funded pregnancy services to all pregnant women, regardless of their immigration status, and eligibility for Medicaid and CHIP to all lawfully residing children and pregnant women, without a five-year bar.²⁸³ Recognizing the importance of providing prenatal and early childhood health and nutrition support, 33 states currently provide Medicaid coverage to lawfully residing children and/or pregnant women without a five-year waiting period.²⁸⁴ Additionally, 21 states use CHIP funding to provide coverage for income-eligible pregnant women regardless of immigration status.²⁸⁵ Sixteen of these states also provide prenatal care to immigrant women who are not income eligible for Medicaid and/or CHIP under the CHIP pregnancy-related services option.²⁸⁶ This allocation of federal and state funding for health and nutrition support, specifically for pregnant women and children, shows direct state effort to ensure the health and well-being of these groups where federal policy allows.

Covering low-income pregnant immigrant women improves their health and saves states money. Since the babies born to these women will be eligible for Medicaid or CHIP regardless of whether their mothers are covered, it is to the state’s advantage to ensure that their mothers have access to comprehensive prenatal care. Covering these mothers means that they give birth to healthier babies, which saves the state money in the long run by reducing health care costs.²⁸⁷ Timely prenatal care can identify mothers who are at risk of delivering premature or low birth weight infants, and it provides the medical, nutritional, and educational interventions that lead to better birth outcomes.²⁸⁸ Women without access to prenatal care are four times more likely to deliver low birth weight infants and seven times more likely to deliver prematurely than women who receive prenatal care.²⁸⁹ Expanding coverage to previously uninsured pregnant women allows them to get the prenatal care they need. For example, a Florida study showed that expanding a public program to provide more women with access to prenatal care resulted in significantly fewer low birth weight babies compared with low-income women who were not enrolled

²⁸³ The Kaiser Family Foundation, *New Option for States to Provide Federally Funded Medicaid and CHIP Coverage to Additional Immigrant Children and Pregnant Women*, 2009, <http://kff.org/medicaid/fact-sheet/new-option-for-states-to-provide-federally/>.

²⁸⁴ National Immigration Law Center, *Table: Medical Assistance Programs For Immigrants in Various States*, 2018, <https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf>.

²⁸⁵ Kaiser Family Foundation, *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults*, 2018, <https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/>.

²⁸⁶ Kaiser Family Foundation, *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults*, 2018, <https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/>.

²⁸⁷ Laura Parisi, Rachel Klein, *Covering Pregnant Women: CHIPRA Offers a New Option*, Families USA, 2010, https://familiesusa.org/sites/default/files/product_documents/Covering-Pregnant-Women.pdf.

²⁸⁸ National Governors Association, Center for Best Practices, *Healthy Babies: Efforts to Improve Birth Outcomes and Reduce High Risk Births*, 2004, https://fhop.ucsf.edu/sites/fhop.ucsf.edu/files/wysiwyg/ip_HealthyBabies.pdf.

²⁸⁹ Michael C. Lu, Yvonne G. Lin, Noelani M. Prietto, and Thomas J. Garite, “Elimination of Public Funding of Prenatal Care for Undocumented Immigrants in California: A Cost/Benefit Analysis,” *American Journal of Obstetrics and Gynecology* 182, part 2, no. 1 (2000), [https://www.ajog.org/article/S0002-9378\(00\)70518-7/fulltext](https://www.ajog.org/article/S0002-9378(00)70518-7/fulltext).

in public health coverage.²⁹⁰ Providing these women with adequate access to prenatal care means they give birth to healthier babies, who then have fewer health problems, which saves states money. Studies have found that every state dollar spent on prenatal care saves states between \$2.57 and \$3.38 in future medical costs.²⁹¹ Research also shows that children born to women who receive adequate prenatal care are significantly more likely to receive well-child visits and proper immunizations.²⁹² Covering uninsured children and pregnant women through Medicaid can cut unnecessary hospitalizations, producing substantial savings by reducing expensive hospital care costs.²⁹³

Similarly, a recent paper found that the decreases in immigrant access to SNAP benefits in the late 1990s had a significant impact on the health of their U.S. born citizen children. Among U.S.-born children of immigrants, whose mothers have a high school education or less, an additional year of parental eligibility in early life reduces the likelihood children are reported in “Poor”, “Fair” or “Good” health (relative to “Excellent” or “Very Good” health), with the primary impacts on a reduction in the incidence of developmental health conditions. In turn, this reduced health has immediate consequences on government spending, as the researchers calculate based on the Medical Expenditure Panel Survey, that the average health care costs of a child who is in “Poor”, “Fair”, or “Good” health is \$2450, compared to \$1462 for children in “Excellent” or “Very Good” health.²⁹⁴

e. Financial Impact on States and Localities: The Proposed Rule Creates Significant Administrative Burdens on The Agencies Which Administer Public Benefit Programs

The proposed rule would pressure large numbers of immigrants and their families to forgo enrolling in vital programs such as nutrition assistance, health coverage and housing that their families are eligible for and need. The rule will create new challenges for state and local agencies administering these programs and will result in an increased workload.

Issues state and local agencies will face include:

- *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

²⁹⁰ Stephen Long, Susan Marquis, “The Effects of Florida’s Medicaid Eligibility Expansion for Pregnant Women,” *American Journal of Public Health* 88, no. 3 (1998).3 (1998), <https://ajph.aphapublications.org/doi/10.2105/AJPH.88.3.371>.

²⁹¹ Robin D. Gorsky, John. P. Colby, “The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire,” *Health Services Research* 23, no. 5 (1989): 583-598, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1065587/>; Institute of Medicine, “Preventing Low Birth Weight,” (1985).

²⁹² Michael Kogan, Greg Alexander, Brian Jack, and Marilee Allen, “The Association between Adequacy of Prenatal Care Utilization and Subsequent Pediatric Care Utilization in the United States,” *Pediatrics* 102, no. 1 (1998).1 (1998), <https://www.ncbi.nlm.nih.gov/pubmed/9651409>.

²⁹³ Leemore Dafny, Jonathan Gruber, “Does Public Insurance Improve the Efficiency of Medical Care? Medicaid Expansion and Child Hospitalizations,” Working Paper 7555, National Bureau of Economic Research, (2000), available online at <http://www.nber.org/papers/w7555>.

²⁹⁴ Chloe East, “The Effect of Food Stamps on Children’s Health: Evidence from Immigrants’ Changing Eligibility” *Human Resources*, (2018), https://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

dates of benefits received.²⁹⁵ This will generate a huge workload for agencies, and in many cases may require access to information that has been archived from no longer functional eligibility systems that have been replaced.

- *Responding to consumer inquiries related to the new rule.* In addition, state and local agencies will have to prepare to answer consumer questions about the new rule. They will experience increased call volume and traffic from consumers concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses. Yet, state and local agencies will be put in an impossible position when answering questions if they simply tell all consumers that they must speak to an immigration attorney to get their questions answered about the impact of access benefits on their immigration status. And such advice would likely deter eligible people from enrolling in programs, including many who would never be subject to a public charge determination. Moreover, people who seek public benefits are also unlikely to be able to afford to seek legal counsel to see if getting services will jeopardize their family's immigration goals.
- *Increased "churn" among the caseload.* As consumers learn about the new rule, some families will terminate their participation programs as already experienced in response to draft public charge-related proposed rule changes being leaked to the media.²⁹⁶ But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that will experience a new kind of churn in their caseloads. Some families may return if they come to understand that they are not subject to a public charge determination, for example, if they have refugee status. Others may reapply when circumstances become even more dire, for example a child may be withdrawn from Medicaid coverage, but without treatment—such as asthma medication—the child's condition may worsen, and the family will re-enroll the child even though they are fearful the act may jeopardize a family member's chance to become a lawful permanent resident. This on again off again approach to benefit enrollment—often referred to as churn—not only yields negative results for families, it also results in duplicative work for state and local agencies. Churn is expensive for state, in one study of SNAP-related churn, the costs averaged \$80 for each instance of churn that requires a new application.²⁹⁷
- *Modifying existing communications and forms related to public charge.* For almost twenty years, agencies have worked under the consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application, application instructions, website, posters used in lobbies, in notices and in scripts and trainings for staff. All of these consumer communications will have to be identified and taken down and as noted above, the new rules would be so far reaching and complicated, it's unclear states could replace them with messages that don't inappropriately deter eligible people.

²⁹⁵ U.S. Citizenship and Immigration Services, *Instructions for Declaration of Self-Sufficiency*, 2018, <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>.

²⁹⁶ Emily Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, New York Times, 2018, <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>.

²⁹⁷ Gregory Mills et al., "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) - Final Report," Prepared by Urban Institute for the US Department of Agriculture, Food and Nutrition Service, 2014, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf>.

- *Undermining adjunctive eligibility for WIC.* Congress permitted WIC to presume any individual on Medicaid, SNAP, or TANF to be income-eligible for WIC, thus reducing the paperwork burden during WIC certification. In 2016, 74.9% of WIC participants were eligible for WIC due to eligibility for another program. A National WIC Association survey estimated significant increases in administrative expenditures on the certification process if adjunctive eligibility was undermined. Due to WIC’s funding formula, increased administrative expenditures will also result in decreased funding for WIC’s nutrition education, breastfeeding support, and client services. WIC complements the work of Medicaid and SNAP to ensure healthy families with adequate access to nutritious foods. Congress has recognized that connection by authorizing adjunctive eligibility, which has helped to reduce paperwork burdens on both clinics and participants, freeing up WIC funding to be used for nutrition education and breastfeeding support. The inclusion of Medicaid or SNAP in public charge review would undercut WIC’s efforts to improve efficiency, streamline certification processes, and focus WIC services on its core public health mission.

Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to streamline enrollment processes between different public assistance programs. Certain states have explored universal online applications that permit an individual to apply for or pre-screen eligibility for multiple public assistance programs at one time.²⁹⁸ The proposed rule would permit immigration officials to review an individual’s attempt to simply *apply* for Medicaid or SNAP benefits.²⁹⁹ This provision will discourage states from continuing with efforts to develop innovative enrollment processes, and likewise discourage individuals from using uniform or joint applications or pre-screening tools where an implicated program is listed.

f. Harm to The Business Sector and U.S. Workforce

The proposed changes will have a direct impact on businesses big and small, creating wasteful red tape for employers in diverse communities across the country and hurting workers across all wage ranges. Simply put, this decision will not create American jobs, and it will harm our economy.

We all get sick, and we all face adversity at times—in fact, two-thirds of Americans between the ages of 20 and 65 will reside in a household that uses a social welfare program such as SNAP or Medicaid at some point in their life.³⁰⁰ For low-wage workers and their families, health, food, and other programs can supplement earnings and enable them to thrive. Contrary to the assumptions underlying the proposed rule, benefits like health and nutrition programs encourage and enable people to work and be a source of support for themselves and their families, not public charges. Many low-wage workers cannot work in a stable and sustained way without these

²⁹⁸ Julia Isaacs, Michael Katz, David Kassabian, *Changing Policies to Streamline Access to Medicaid, SNAP, and Child Care Assistance*, Urban Institute, 2016, <https://www.urban.org/sites/default/files/publication/78846/2000668-Changing-Policies-to-Streamline-Access-to-Medicaid-SNAP-and-Child-Care-Assistance-Findings-from-the-Work-Support-Strategies-Evaluation.pdf>; Zoe Neuberger, *Modernizing and Streamlining WIC Eligibility Determination and Enrollment Processes*, Center for Budget and Policy Priorities, 2017, <https://www.cbpp.org/sites/default/files/atoms/files/1-6-17fa.pdf>.

²⁹⁹ Department of Homeland Security, *Proposed Rule: Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,291 (Oct. 10, 2018) (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i).)), <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.

³⁰⁰ Mark R. Rank, Thomas A. Hirschl, “Welfare Use as a Life Course Event: Toward a New Understanding of the U.S. Safety Net,” *Social Work*, Volume 47, Issue 3, (2002), <https://doi.org/10.1093/sw/47.3.237>.

supports – which in turn will mean less sustained and regular work and will disrupt industries.

- *Low-wage workers*

Businesses that largely employ individuals at low wages would suffer, as legally present non-citizens could become too encumbered to continue their employment. The proposed rule will destabilize their lives and will make it harder for them to sustain steady employment. Nearly 1 in 3 workers in low-income jobs earn under \$12 an hour. Six of the 20 largest occupational fields in the country — including retail salespeople, cashiers, food preparation and serving workers, waiters and waitresses, stock clerks, and personal care aides—have median wages close to or below the poverty threshold for a family of three (\$20,420). Many lawfully present non-citizens who have jobs within these sectors simply may not earn enough to provide quality health care, nutritious food and safe, stable housing to their families. Programs like SNAP, CHIP, and Medicaid are designed to serve as work supports that help individuals meet their families’ basic needs to stay healthy and safe.

- *Workforce development*

The public charge rule would also damage state and local governments’ ability to support their residents in achieving higher education and workforce policy goals. State and local governments regularly advance policies to improve the education and employability of their residents. For example, more than 40 states have established goals for postsecondary credential attainment, such as a goal of having 60 percent of state residents earn a college degree or other postsecondary credential by 2025.³⁰¹ Many states won’t be able to reach their ambitious goals without including their immigrant residents.³⁰² To accomplish these goals, states have established programs and services to equip returning adult students to persist and succeed in their education, including through navigation and case management assistance to help students access essential health and nutrition benefits. But the public charge rule would penalize immigrants who use many of these public benefits, thus creating a disincentive for immigrants to participate in the very programs that are intended to help them succeed in their education and contribute economically.

g. Harm to Higher Education

The proposed rule could decrease enrollments on higher education and deter immigrant students from pursuing postsecondary education. While public education benefits, such as Pell Grants or other financial aid, are not included under the rule, the fear and confusion generated by the rule would deter greater numbers of immigrant students who are eligible for federal and state-funded aid programs from applying to college altogether. Over a quarter of undergraduates nationally in higher education are first- or second-generation immigrant students, and one in five come from a household in which English is not the primary language spoken.³⁰³

³⁰¹ See overview of all states here:

<https://www.wsac.wa.gov/sites/default/files/2017.04.19.04.Attainment%20Goals%20are%20Critical.pdf> and details on 29 of the state goals here: <http://strategylabs.luminafoundation.org/wp-content/uploads/2013/10/State-Attainment-Goals.pdf>.

³⁰² National Skills Coalition, *Middle-Skill Credentials and Immigrant Workers: Texas’ Untapped Assets*, 2015,

<https://m.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf>.

³⁰³ U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid

Pell Grants are targeted to meet students with the greatest financial need at public and private institutions, providing the largest awards to the lowest-income students. Public institutions account for more than two-thirds of Pell recipients (68%), with 36 percent of public four-year students receiving Pell Grants, and 32% of community college students who are Pell recipients.³⁰⁴ In addition, community colleges have a much higher proportion of low-income and immigrant students than other higher education sectors. Fearing that the public charge would pertain to Pell Grants or other public education benefits, many immigrant students may mistakenly avoid applying for Pell or any state or financial aid and will be unable to afford college without it.

Further, as noted by the National Skills Coalition, “the rule would increase college students’ financial instability and heighten their risk of dropping out. Many college students are part of larger households – either as adult children or as spouses and parents themselves.”³⁰⁵ We know that when students and their families are unable to meet core living and housing needs or face higher costs, the students are less likely to pursue educational and career pathways, more likely to cut back on their educational course load, or drop out altogether. While not directly affected by the public charge, the proposed regulations could discourage undocumented immigrant students from pursuing a postsecondary education and who in the future may have the opportunity to adjust their status and further contribute to our communities and our country.

i. The Proposed Rule Would Impede Efforts to Increase College Completion

Colleges and universities serve as key generators of social and economic mobility for all students in our nation. Immigrant and low-income students especially benefit from the transformative power of higher education. Research shows that postsecondary education boosts economic mobility, improves lives, and helps the economy. Since 2008, the majority of the new jobs created in the economy are going to college-educated individuals,³⁰⁶ and research studies have shown that a postsecondary education can increase economic mobility and improve lives.³⁰⁷

To be sure, colleges help to fuel economic growth and prosperity in their communities. The college and career success of immigrant students is critical to meeting state educational goals and addressing acute skills shortages. According to the nonprofit National Skills Coalition (NSC), many states won’t be able to reach their goals without including their immigrant residents.³⁰⁸ More than 40 states have established goals for postsecondary credential attainment, such as a goal of having 60% of state residents earn a college degree or other postsecondary credential by 2025.³⁰⁹ Community colleges have often aligned their own institutions’ student completion goals

Study; 2016 American Community Survey, U.S. Department of the Census.

³⁰⁴ Spiros Protosaltis and Sharon Parrot, “Pell Grants--A Key Tool for Expanding College Access and Economic Opportunity--Need Strengthening, Not Cuts,” Center on Budget and Policy Priorities, July 27, 2017 https://docs.google.com/document/d/1FVKs_KDat81WvqZTg8Sm_4Wyk25pYsLmUinsgxKqItE/edit?ts=5bc61576 , <https://www.cbpp.org/research/federal-budget/pell-grants-a-key-tool-for-expanding-college-access-and-economic-opportunity>.

³⁰⁵ Taken with permission from the National Skills Coalition’s template on the proposed Public Charge order.

³⁰⁶ Robert Shapiro, “The New Economics of Jobs is Bad News for Working-Class Americans and Maybe for Trump,” 2018, <https://www.brookings.edu/blog/fixgov/2018/01/16/the-new-economics-of-jobs-is-bad-news-for-working-class-americans-and-maybe-for-trump/>.

³⁰⁷ Department of the Treasury and the Department of Education, “The Economics of Higher Education, , December 2012, https://www.treasury.gov/connect/blog/Documents/20121212_Economics%20of%20Higher%20Ed_vFINAL.pdf.

³⁰⁸ National Skills Coalition, *Middle-Skills Credentials and Immigrant Workers: Texas’ Untapped Assets*, <https://www.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf> ..

³⁰⁹ See overview at <https://www.luminafoundation.org/lumina-goal>.

with their states' higher education goals and plans. These colleges depend upon state funding for programs to close achievement gaps and provide students with the skills needed to succeed in college and the workforce. The proposed rule would significantly diminish prospects for immigrant student success and impede state efforts to increase college completion rates.

ii. The Proposed Rule Would Increase the Burden on Campus Student Health Centers

The proposed rule would undermine access to essential health, nutrition and other critical programs for eligible immigrant students, which would impact college campuses. The fear created by these rules would extend far beyond any individual who may be subject to the "public charge" test. Increased numbers of uninsured students as well as students coming from uninsured families will increase the burden on campus student health centers; changes in healthcare usage and coverage also can cause additional public health concerns for campus communities.

iii. The Proposed Rule Would Discourage Adult Immigrant Learners from Participating in Workforce Training, Certification Programs, and Adult Education Programs That Help to Improve Their English Language Skills

Many adult immigrant learners have enrolled in community colleges to improve their English skills, participate in job training and career development programs, and support their families. These programs have enabled them to pursue productive, meaningful employment and become actively engaged in our communities. One third of community college students have family incomes of less than \$20,000, according to the National Center for Education Statistics (see Community Colleges FAQs).³¹⁰ Research has shown that supportive services that help individuals access public benefits programs are often vital to ensuring that working adults succeed in postsecondary education.³¹¹ Yet, penalizing low-income adult immigrant learners for using these benefits creates a disincentive for them to participate in the educational and job training programs that are intended to help them succeed and contribute economically.

A National Skills Coalition analysis of Bureau of Labor Statistics data shows that 84% of American jobs today require education and skills beyond the high school level.³¹² These middle-skills jobs, requiring more than a high school diploma but less than a four-year degree, "remain the largest segment of the U.S. economy and represent a crucial pathway to good, family sustaining employment."³¹³ Immigrants are critical to meeting the demand for middle-skill positions, and specialized training is often provided by community colleges. Restricting immigrants' access to public benefits that allow them to obtain these in-demand skills hurts adult immigrant learners and hurts our economy.

³¹⁰ "Community College FAQs," Community College Research Center, Teachers College, Columbia University, <https://ccrc.tc.columbia.edu/Community-College-FAQs.html> .

³¹¹ Rand Corp, Connecting College Students to Alternative Sources of Support The Single Stop Community College Initiative and Postsecondary Outcomes, , 2016, http://www.singlestopusa.org/wp-content/uploads/2016/11/RAND-Report_Executive-Summary-1.pdf ..

³¹² "United States' Forgotten Middle," National Skills Coalition, <https://www.nationalskillscoalition.org/resources/publications/2017-middle-skills-fact-sheets/file/United-States-MiddleSkills.pdf> ..

³¹³ Amanda Bergson-Shilcock, "At the Intersection of Immigration and Skills Policies: A Roadmap to Smart Policies for State and Local Leaders," National Skills Coalition, September 2018, p. 2, https://www.nationalskillscoalition.org/resources/publications/file/At-the-intersection-of-immigration-and-skills-policy_web.pdf ..

According to the non-partisan Migration Policy Institute, “tapping into the skills of” recently arrived and increasingly educated immigrant populations “represents an important potential source of skilled labor,” and is especially needed given the labor and skills shortages that have been documented in various fields.³¹⁴ A National Academies of Science study cited in this report notes that “a typical recent immigrant with a bachelor’s degree contributes almost \$500,000 more in taxes than he or she uses in public benefits over a lifespan.”³¹⁵ Immigrant professionals often turn to community colleges and universities as “they seek to improve their language skills, fill content gaps, or attain industry-recognized credentials through apprenticeships.”³¹⁶ Creating any additional barriers for these highly-skilled adult learners is counterproductive.

iv. The Proposed Rule Would Be A Burden on Individuals and Employers and Would Serve as a Deterrent to International Talent Coming to The United States to Study and Work

The proposed public charge test would apply when individuals apply for a green card or seek admission to the U.S. For nonimmigrants, including F-1 students, J-1 exchange visitors, H-1B specialty workers, or their dependents, the public charge test would be applied when they apply to extend or adjust their nonimmigrant status. The increased uncertainty imposed by the new regulations is likely to deter even well-qualified international students from attempting to study and pursue careers in the US.

Employers who sponsor highly skilled foreign professionals and workers, including educational institutions, also would be burdened by the new procedures, as their employees would have to navigate the additional new barrier of proving that they are not likely to become a public charge each time they file for an extension or change of status. This will cause complications in the adjudication of nonimmigrant visa petitions filed by employers and the increased unpredictability creates new uncertainties and risk for employers, which is costly.

Beyond the individual and administrative burdens detailed above, the proposed rule would present another harmful deterrent to international talent coming to the United States to study and work, regardless of their financial status. This will adversely impact colleges and universities, their ability to provide educational programs to all students, and the vibrancy of their communities. From 2004 to 2016, first-time enrollments of international students in U.S. colleges and universities increased significantly, from 138,000 in 2004 to 364,000 in 2016; during this period of time, first-time enrollments of international students doubled or more at public and private baccalaureate institutions, public community colleges, and master’s granting institutions.³¹⁷ NAFSA has estimated that international students contribute \$36.9 billion annually to the economy.³¹⁸ Declining enrollments of

³¹⁴ Jeanne Batalova and Michael Fix, “Tapping the Talents of Highly Skilled Immigrants in the United States. Takeaways from Experts Summit,” Migration Policy Institute, August 2018, pp. 6-7. <https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit>

³¹⁵ Batalova, “Tapping the Talents of Highly Skilled Immigrants in the United States”

³¹⁶ Batalova, “Tapping the Talents of Highly Skilled Immigrants in the United States”

³¹⁷ See Pew Research Institute, “Facts on International Students,” November 20, 2017.

³¹⁸ NAFSA,

http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/ NAFSA,

http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/

international students coming to the U.S. will be economically detrimental to regions across the country. There is already evidence that first-time international student enrollments in U.S. colleges and universities are declining.³¹⁹ This proposed rule would only further exacerbate this disturbing trend and requires a careful analysis and quantification of the costs to U.S. higher education and regional economies.³²⁰

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 access postsecondary pathways and support themselves and their families in the future.

V. THE PROPOSED REGULATION INCLUDES PROVISIONS WHICH WOULD CAUSE ADDITIONAL HARMS TO CERTAIN POPULATIONS

In addition to the consequences for people of color, women, and children discussed at length in sections I and III of our comments, the proposed rule is particularly damaging to other specific populations. The proposed rule will also cause disproportionate harm to victims of domestic violence and sexual abuse, individuals living with disabilities, seniors, as well as lesbian, gay, bisexual, and transgender immigrants and their families. These groups should be of special concern for one or more of several reasons: they are particularly vulnerable, protected legally, and/or central to the nation's economic future.

a. Victims of domestic violence and sexual assault

The public charge rule will have a detrimental impact on victims of domestic violence and sexual assault and their ability to obtain and maintain safety as a result of abuse. While victims seeking immigration status are exempt from the application of the public charge ground of inadmissibility when adjusting through the VAWA or U pathways, *i.e.*, see INA 212(a)(4)(E), and proposed 8 CFR 212.25, many victims of domestic violence and sexual assault and their family members do not seek immigration status in those named categories, and will be harmed as a consequence. The proposed public charge rule will harm not only victims who are seeking immigration status or entry into the United States, but also U.S. born victims, or victims who already have lawful status in households

³¹⁹ In fall 2017, Open Doors released their annual survey showing a total of 291,000 new international students enrolled at U.S. institutions in 2016–17, a 3.3% decrease from 2015–16 (see <https://www.iie.org/Research-and-Insights/Open-Doors> and the 2017 Open Doors data: <https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics>).<https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics>).

In a “snapshot” survey by Open Doors, 45% of U.S. colleges responding reported a decline in international student enrollments for fall 2017, with an average decline of 7% (see this Inside Higher Ed article, <https://www.insidehighered.com/news/2017/11/13/us-universities-report-declines-enrollments-new-international-students-study-abroad>).<https://www.insidehighered.com/news/2017/11/13/us-universities-report-declines-enrollments-new-international-students-study-abroad>). A Student Exchange and Visitor Program (SEVP) report released in April 2018 showed overall declines in international student enrollments (see the SEVP report and these Inside Higher Ed and Wall Street Journal articles on declining enrollments). Declines of international student enrollments were even more pronounced when OPT participants were excluded from the analysis (see this Inside Higher Ed article).

³²⁰ See Jie Zong and Jeanne Batalova, “International Students in the United States,” Migration Policy Institute, May 9, 2018. Zong and Batalova conclude, “(m)ultiple factors contribute to slowed enrollment, including the rising cost of U.S. higher education, student visa delays and denials, and an environment increasingly marked by rhetoric and policies that make life more difficult for immigrants, as well as changing conditions and opportunities in home countries and increasing competition from other countries for students.” <https://www.migrationpolicy.org/article/international-students-united-states> <https://www.migrationpolicy.org/article/international-students-united-states>.

where family members will be seeking entry or immigration status in the future.

For example, under the rule, a parent may fear seeking critical health-care benefits for a non-citizen child sexual abuse victim to help recover from both the physical and psychological trauma if the child might be negatively impacted by her or his usage of subsidized health care benefits. Another example is a dependent domestic violence survivor married to an abusive non-immigrant temporary worker being discouraged from accessing cash assistance for domestic violence victims for fear that it might jeopardize her ability to renew her status or obtain residence in the future. Access to health care, housing, food assistance, and other safety net benefits play a pivotal role in helping victims overcome domestic violence and sexual assault. Victims should not be discouraged from seeking or relying on economic security programs to escape abuse or recover from the trauma they've experienced.

In weighing the factors to be applied to those seeking admission, domestic violence and sexual assault survivors will be negatively impacted by the application of the public charge rule. While domestic violence and sexual assault occur across the socio-economic spectrum, there are unique challenges and barriers at the intersection of gender-based violence and economic hardship: Abuse can result in victims falling into poverty: Victims who might not have previously been considered low income may experience financial abuse or because the consequences of abuse or assaults have undermined the victim's ability to work or maintain their housing, health, or otherwise access financial security.³²¹ For example, many abusive partners, in order to exercise control over their partners and their children, will actively seek to prevent and sabotage their partner from attaining economic independence or stability by limiting their access to financial resources, interfering with employment, ruining credit, and more.³²² Sexual assault survivors may be forced to leave their housing and/or employment as a result of the violence, and become even more at risk for sexual violence as a result.³²³ In these instances, the public charge rule's primary focus, for example, on the health, financial status, family size, and education, on the applicant for admission will unduly punish victims for the consequences of abuse they've faced. Not only does the public charge rule undermine federal and state policies to support victims by discouraging them from accessing critical services, the proposed rule exacerbates the harmful impacts of the abuse, possibly by keeping them trapped in abusive situations.

Nutrition, health care, and housing programs benefits are a necessity for survivors of domestic violence and sexual assault, allowing them to rebuild their lives after violence. In a 2017 survey of service providers working with victims of violence, over 88% of respondents said that SNAP is a very critical resource for a significant number of domestic violence and sexual assault victims. Specifically, nearly 80% of respondents reported that most domestic violence victims rely on SNAP to help address their basic needs and to establish safety and stability, and 55% of respondents said the same is true of most sexual assault victims.³²⁴ Access to assistance

³²¹ Eleanor Lyon, *Welfare, Poverty and Abused Women: New Research and its Implications*, National Resource Center on Domestic Violence, 2000, <https://vawnet.org/material/welfare-poverty-and-abused-women-new-research-and-its-implications>.

³²² J. L. Postmus, et al., *Understanding economic abuse in the lives of survivors*. *Journal of Interpersonal Violence*, 2014, <https://www.ncbi.nlm.nih.gov/pubmed/21987509>; and Adams, A, Sullivan, C, Bybee, D, & Greeson, M., Development of the scale of economic abuse, *Violence Against Women*, 2008, <https://www.ncbi.nlm.nih.gov/pubmed/18408173>.

³²³ Loya, R. M, *Rape as an economic crime: The impact of sexual violence on survivor's employment and economic well-being*, *Journal of Interpersonal Violence*, 2014, <https://www.ncbi.nlm.nih.gov/pubmed/25381269>.

³²⁴ Shaina Goodman, *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual*

programs is an important factor in victims' decision-making about whether and how they can afford to leave a dangerous situation, and in planning how to keep themselves and their children healthy, well, and housed.³²⁵ As this data illustrates, publicly-funded resources are imperative for women's safety.³²⁶ The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.³²⁷ Without sufficient resources, victims are either compelled back into an abusive relationship, or face destitution and homelessness.³²⁸

b. Individuals Living with Disabilities

The proposed regulations would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.³²⁹ The proposal would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disabilities and the discrimination they face because of them.³³⁰ For example:

- 1/3 of the adults under aged 65 who are enrolled in the Medicaid program have disabilities; as compared to only 12 % of adults in the general population.³³¹
- 3 in 10 nonelderly adults with disabilities are enrolled in Medicaid.³³²
- 41 % of children with special needs are enrolled in Medicaid or CHIP only; another 7 % are dually enrolled in private insurance and Medicaid and CHIP.³³³

Violence Victims' Economic Security, 2018, <https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and>

³²⁵ Eleanor Lyon, Shannon Lane, and Anne Menard, *Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences*, VAWnet, 2008, <https://vawnet.org/material/meeting-survivors-needs-multi-state-study-domestic-violence-shelter-experiences>; Eleanor Lyon, Jill Bradshaw, and Anne Menard, *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study*, National Resource Center on Domestic Violence, 2011, <https://www.ncjrs.gov/pdffiles1/nij/grants/237328.pdf>; and Kimerling, R., Alvarez, J., Pavao, J., Mack, K. P., Smith, M. W., & Baumrind, N., *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder*, Journal of Interpersonal Violence, 2009, <https://www.ncbi.nlm.nih.gov/pubmed/18458353>.

³²⁶ Eleanor Lyon, Shannon Lane, and Anne Menard, *Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences*, VAWnet, 2008, <https://vawnet.org/material/meeting-survivors-needs-multi-state-study-domestic-violence-shelter-experiences>.

³²⁷ Centers for Disease Control, *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices*, 2017, <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

³²⁸ Eleanor Lyon, *Poverty, Welfare and Battered Women: What Does the Research Tell Us?*, National Electronic Network on Violence Against Women, 1997, <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.597.6886>.

³²⁹ 6 CFR 15.30(b)(1)(ii), (iii), (iv).

³³⁰ In enacting the Americans with Disabilities Act, Congress noted that people with disabilities "have been precluded from" fully participating in all aspects of society "because of discrimination." 42 U.S.C. 1201(a).

³³¹ Center on Budget and Policy Priorities, *Medicaid Works for People with Disabilities*, 2017, <https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities>

³³² MaryBeth Musumeci, Julia Foutz, *Medicaid Restructuring under the American Health Care Act and Nonelderly Adults with Disabilities*, Kaiser Family Foundation Issue Brief, March 2017, <http://files.kff.org/attachment/Issue-Brief-Medicaid-Restructuring-Under-the-American-Health-Care-Act-and-Nonelderly-Adults-with-Disabilities>.

³³³ MaryBeth Musumeci, Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services and Spending*, Kaiser Family Foundation, Issue Brief, Feb. 2018, <https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/>

- More than ¼ of individuals who use SNAP have a disability.³³⁴

Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community. By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed services that allow them to manage their medical conditions, participate in the workforce and improve their situation over time.

i. Individuals living with HIV/ AIDS

The proposed rule would cause disproportionate and discriminatory harm to individuals living with HIV/AIDS. Approximately 1.1 million individuals in the U.S. are living with HIV/AIDS.³³⁵ People with HIV, either symptomatic or asymptomatic are protected by the Americans with Disabilities Act (ADA).³³⁶ Federal law prohibits disability discrimination by its executive agencies, requiring that they provide reasonable accommodation to disabled individuals so they cannot be denied meaningful access to agencies' services and benefits—including immigration benefits—based on their disabilities.³³⁷ The proposed rule would use an HIV diagnosis to exclude both applicants and applicants seeking to unite with disabled family members.

Not only does this send the signal that individuals with HIV/AIDS and other chronic health conditions are “undesirable”—drawing disturbing parallels to the 1987 HIV travel and immigration ban overturned in 2010³³⁸—but the proposed rule ignores the reality that a chronic illness such as HIV/AIDS is not an accurate indicator of future self-sufficiency and full-time employment capabilities. In June this year, the U.S. Bureau of Labor Statistics released a Current Population Survey (CPS) showing that in 2017 the labor force participation rate for those with a disability had actually increased.³³⁹ Indeed, with appropriate treatment, care and support, persons living with HIV/AIDS can expect to live long, healthy and productive lives.

Under the proposed rule, HIV-positive applicants and others with chronic health conditions would be required to purchase private, “non-subsidized medical insurance.” HIV/AIDS treatment, known as anti-retroviral therapy (ART), is prohibitively expensive in the United States and not normally covered through private insurance.³⁴⁰ Even those with private insurance or certain employer-based insurance, usually have no choice but to apply for

³³⁴ Steven Carlson, Brynne Keith-Jennings & Raheem Chaudhry, Center on Budget and Policy Priorities, SNAP Provides Needed Food Assistance to Millions of People with Disabilities, June 14, 2017, <https://www.cbpp.org/research/food-assistance/snap-provides-needed-food-assistance-to-millions-of-people-with>

³³⁵ Centers for Disease and Control and Prevention, *Basic Statistics*, www.cdc.gov/hiv/basics/statistics.html.

³³⁶ *Bragdon v. Abbott*, 524 U.S. 624 (1998).

³³⁷ 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504.

³³⁸ Human Rights Campaign, *After 22 Years, HIV Travel and Immigrant Ban Lifted*, 2010, www.hrc.org/press/after-22-years-hiv-travel-and-immigration-ban-lifted.

³³⁹ U.S. Bureau of Labor Statistics, *Current Population Survey, 2016 and 2017 annual averages*.

³⁴⁰ Emily Land, *Why do some HIV drugs cost so much? Pharma, insurers, advocacy groups and consumers weigh in*, BETA, 2017, <https://betablog.org/hiv-drugs-price/>.

government subsidies for the substantial portion that their insurance plan does not cover.³⁴¹ In fact, the rule may actually incentivize U.S. citizens/permanent residents to terminate their subsidized healthcare in order to remain eligible to petition for their family members living abroad. Reports are already emerging of individuals who are considering waiting to begin life-saving ART in the belief that this will ensure their eligibility to reunite their families.³⁴² Such scenarios call to attention the catastrophic public health implications that this proposed rule threatens to create, undoing hard won progress towards ending the HIV/AIDS epidemic in the US.

ii. Children with Special Health Care Needs

According to estimates from the National Survey of Children's Health, roughly 2.6 million children in immigrant families have a disability or special health care need.³⁴³ Children with special health and developmental needs tend to require medical, behavioral, and/or educational services above and beyond what typical children need to keep them healthy and promote positive development.

These special needs make children with disabilities in immigrant families vulnerable to hardship due to the economic burdens associated with requiring specialized care. Parents of children with disabilities typically work fewer hours and ultimately earn less income due to their children's caregiving needs.³⁴⁴ As a group, children with disabilities are more likely to live in low-income households and to experience food insecurity and housing instability, making programs like SNAP and housing assistance vital to their wellbeing.³⁴⁵ Ensuring that kids with special health care needs have access to services helps their parents maintain work and improve earnings. The proposed rule would restrict immigrant families' access to public anti-poverty programs and further exacerbate the economic hardships that children with disabilities and other special needs already experience.

While many children in the U.S.—both in immigrant and native-born families—depend on public health insurance programs, Medicaid is uniquely critical for children with disabilities. Roughly half of all children with a disability or other special health care needs rely on public insurance for a variety of services and supports, including respite care; occupational, physical, or speech therapies; and prescription drugs.³⁴⁶ These services are critical to keep children healthy and thriving, but they are typically costly—even with insurance—and are out of reach for families who lack coverage. Recognizing the immense financial burden that disabilities and special health care needs can

³⁴¹ US National Institute of Health, *Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents Living with HIV*, <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/459/cost-considerations-and-antiretroviral-therapy>.

³⁴² Amanda Lugg, *Newly Proposed 'Public Charge' Rule Could Be Devastating to HIV-Positive Immigrants*, *The Body*, 2018, <http://www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html?ic=tbhtrump>.

³⁴³ National Survey of Children's Health, 2016.

³⁴⁴ Sloan Work and Family Research Network, *Questions and Answers about Employed Parents Caring for Children with Disabilities*, https://wfrn.org/wp-content/uploads/2018/09/Factsheet_Caring_Child_Disability.pdf.

³⁴⁵ Rebecca Ullrich, *Cuts to Medicaid Would Harm Young Children with Disabilities*, Center for American Progress, 2017, <https://www.americanprogress.org/issues/early-childhood/reports/2017/05/03/431766/cuts-medicare-harm-young-children-disabilities>; Susan L. Parish, Roderick A. Rose, Megan Andrews, et al., *Material Hardship in US Families Raising Children with Disabilities: Research Summary and Policy Implications*, UNC School of Social Work, 2009, <https://www.realeconomicimpact.org/data/files/reports/outside%20reports/material%20hardship%20children%20with%20disabs.pdf>.

³⁴⁶ MaryBeth Musumeci and Julia Foutz, *Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending*, Kaiser Family Foundation, 2018, <https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/>.

place on families, most states offer alternative eligibility pathways that allow children in households with higher incomes to receive Medicaid.³⁴⁷

By including Medicaid in the definition of “public benefit” for the purposes of public charge determinations (as described in §212.21), the proposed rule would undermine immigrant families’ access to Medicaid and other forms of public insurance and force families to pick and choose which services they can pay for on their own while still putting a roof over their heads and food on their tables. At minimum, forgoing critical services could hamper children’s developmental progress. For some families, the stakes are even higher: comprehensive coverage through these programs is necessary to keep their children alive.

While §212.21 outlines exceptions for services funded by Medicaid but provided through the Individuals with Disabilities Education Act (IDEA), it is unclear how this carve-out would work in practice. Children with special needs cannot and do not receive Medicaid for educational services alone. The exclusion of Medicaid-funded IDEA services will likely do little to encourage families who are fearful of participating in Medicaid to maintain their enrollment.

Families with children with special health care needs would also be disproportionately disadvantaged by the standards for public charge determinations laid out in §212.22. In general, these families would be less likely to reach the “heavily weighted positive factor” of having financial assets, resources, and support of at least 250 percent FPL. And unless the family has an extremely high income, it would be difficult to demonstrate a financial ability to fully meet a child’s special health care needs without the help of public insurance.

c. Seniors

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.³⁴⁸ 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. In fact, 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.³⁴⁹

If this rule were implemented, many U.S. citizens may no longer be able to welcome their own parents into the country because it will be nearly impossible for older adults to pass the “public charge” test under the new criteria. Instead of recognizing the value of intergenerational families who support each other, the proposed rule

³⁴⁷ MaryBeth Musumeci and Julia Foutz, *Medicaid’s Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending*, Kaiser Family Foundation, 2018, <https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/>.

³⁴⁸ Jeanne Batalova, *Senior Immigrants in the United States*, Migration Policy Institute, 2012, <https://www.migrationpolicy.org/article/senior-immigrants-united-states>.

³⁴⁹ *Comparing* Dept. of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table 7, www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf with Immigration & Naturalization Service, Office of Policy & Planning, *Legal Immigration, Fiscal Year 1997*, Table 1, www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf.; and Stacy Torres Xuemei Cao, *The Immigrant Grandparents America Needs*, New York Times, 2018, www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html.

callously labels parents and grandparents as a burden because of their age and health needs and ignores the critical roles many grandparents play in caring for their grandchildren and other family members, often enabling others to work. Furthermore, 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-income households,³⁵⁰ meaning they are likely to rely on public assistance programs to meet their basic needs.

Having health insurance is especially important for older adults because they have greater health care needs. Medicare is a lifeline for most seniors, providing coverage for hospital, doctors' visits, and prescription drugs, but many immigrant seniors are not eligible for Medicare. Moreover, many Medicare beneficiaries rely on other programs to help them afford out-of-pocket costs. Almost 1 in 3 Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy.³⁵¹ Nearly 7 million seniors 65 and older are enrolled in both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.³⁵² Medicaid is also critical for long-term care, home and community-based services, dental, transportation, and other services Medicare does not cover and older adults could otherwise not afford.

Low-income seniors also greatly benefit from programs such as Section 8 rental assistance and SNAP to meet their basic needs.³⁵³ If immigrant families are afraid to access nutrition assistance programs, more older adults will be food insecure and at risk of unhealthy eating which can cause or exacerbate other health conditions. If immigrant families are afraid to seek housing assistance, seniors with limited fixed incomes and their families will have fewer resources to spend on other basic needs, including food, medicine, transportation, and clothing.

d. Lesbian, Gay, Bisexual, and Transgender Immigrants and Their Families

The proposed public charge regulation would have significant harmful effects on lesbian, gay, bisexual, and transgender (LGBT) immigrants and their families. There are an estimated 904,000 LGBT immigrants living throughout the U.S.³⁵⁴ While there are no specific data collected or reported by the Departments of Homeland Security or State about LGBT immigrants, LGBT individuals always have, and will continue to, use family-based, employment-based, and other available categories to apply for lawful permanent residence in the U.S.³⁵⁵ For example, LGBT immigrants in same-sex marriages are recognized as spouses under U.S. immigration law after the 2013 U.S. Supreme Court decision in *U.S. v. Windsor*, declaring the misnamed-Defense of Marriage Act unconstitutional. LGBT individuals with higher education and skills often are able to use employment-based visas

³⁵⁰ Manatt Health, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard*, 2018, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>.

³⁵¹ Kaiser Family Foundation, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing*, 2018, www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

³⁵² Kaiser Family Foundation, *Medicaid Enrollment by Age*, <https://www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1¤tTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

³⁵³ Justice in Aging, *Supporting Older Americans' Basic Needs: Health Care, Income, Housing and Food*, 2018, www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-Americans%E2%80%99-Basic-Needs-Health-Care-Income-Housing-and-Food.pdf.

³⁵⁴ Gary J. Gates, *LGBT Adult Immigrants in the United States*, The Williams Institute, 2013, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>.

³⁵⁵ Immigration Equality, *Legal Resources*, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/#.W8Thd2hKhPY>.

to work in multi-national and domestic corporations that welcome and support diverse employees, including LGBT employees. Since the 1990's, LGBT refugees who are fleeing persecution based on their sexual orientation or gender identity have been able to find legal protection in the U.S., but often face many hurdles in proving their claims to persecution.

Similar to other immigrants, not all LGBT immigrants and their families have achieved economic success and financial security. Many LGBT immigrants and their families struggle economically and use some of the government programs that would make them ineligible for permanent residence under the proposed public charge regulation. As an intersectional subset of both the immigrant and LGBT populations, it is likely that tens of thousands of LGBT immigrants and their families, including those with U.S. citizen children, are using Medicaid, SNAP, and other government programs to assist themselves and their families with health insurance, nutrition, and other supports. For example, an estimated 11% of LGBT adults ages 18-64 use Medicaid as their health insurance program.³⁵⁶ An estimated 27% of LGBT adults ages 18-44 use SNAP, with higher utilization rates among racial and ethnic minority LGBT adults and those with children.³⁵⁷ Some subset of these LGBT adults are LGBT immigrants and their families, who will be impacted by the proposed public charge regulation.

Moreover, because of continuing discrimination based on their sexual orientation and gender identity, LGBT immigrants, similar to all LGBT individuals, face additional challenges in accessing and maintaining education, employment, housing, and health care, and may be more likely to need assistance with basic family supports such as health insurance and nutrition programs. The multiple and intersectional identities of LGBT immigrants means greater risk for a lifetime of discrimination that restricts educational, employment, and other opportunities. These cumulative and compounding experiences of discrimination make transgender immigrants, especially transgender women of color, and lesbian immigrants, especially lesbians of color, particularly vulnerable. The proposed public charge regulation threatening denial of permanent residence for simply using government programs that provide low-income families with health care, nutrition, and other basic support would impose the untenable choice on LGBT immigrants and their families between disenrolling from these safety net programs or jeopardizing their future immigration status.

VI. SECTION BY SECTION DISCUSSION AND RESPONSES TO QUESTIONS RAISED BY THE DEPARTMENT

The majority of our comments to this point have addressed the harmful impact of the rule as a whole, because different sections interact in ways that have a greater impact than any individual section. In order to ensure that our input is fully captured in the Department's analysis of the comments received, the following section addresses the rule section by section.

In addition, in the notice of proposed rulemaking, the Department explicitly poses several questions regarding specific elements of the rule. We are responding to them to ensure that our voice is heard, and that the rule is

³⁵⁶ Kerith J. Conron & Shoshana Goldberg, *LGBT Adults on Medicaid*, The Williams Institute, 2018, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Medicaid.pdf>.

³⁵⁷ Taylor N.T. Brown, Adam P. Romero, Gary J. Gates, *Food Insecurity and SNAP Participation in the LGBT Community*, The Williams Institute, 2016, <https://williamsinstitute.law.ucla.edu/wpcontent/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

not made even more punitive and harmful, but our response to them should in no way be interpreted to indicate that the rule would be acceptable in its current form.

Proposed section 212.21: Definitions for public charge

212.21(a) The Department proposes to define Public Charge as “an alien who receives one or more public benefit as defined in paragraph (b) of this section.”

CLASP strongly opposes this definition and recommends that the current definition of public charge be retained. Specifically, public charge should continue to be defined as a non- U.S. citizen who is “likely to become primarily dependent on the Government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance purposes, or institutionalization for long-term care at Government expense (other than imprisonment).”

The proposed language is a dramatic change to the long-understood meaning of public charge and is inconsistent with Congressional intent in providing non-cash benefits as supports for low-income working families as well as the prospective nature of the public charge determination. (See section I for detailed analysis).

212.21(b) The Department proposes to look at receipt of cash assistance for income maintenance, SNAP benefits, Section 8 Housing assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental-Assistance (including Moderate Rehabilitation), Medicaid (with certain listed exceptions, Premium and Cost Sharing Subsidies for Medicare Part D, and Subsidized Housing under the Housing Act of 1937 in making determinations of public charge.

This section also sets out the thresholds for when receipt of these benefits will be counted and makes an exception for benefits received by an individual serving in the U.S. armed forces or the spouse or child of such an individual. We respond to these issues separately.

Listed benefits

As previously mentioned, at 83 FR 51164, the regulation explains that the list of included programs was identified based in large part on the relative levels of Federal government expenditures. However, it is inappropriate and outside of DHS's lawful jurisdiction for the Department of Homeland Security to save money by trying to discourage people from utilizing benefits for which Congress has made them eligible. 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.

Any Federal, State, local or tribal cash assistance for income maintenance, including but not limited to Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF)

The regulation does not make any justification for the inclusion of these benefits, other than their dollar value,

presumably because they may already be considered in the determination of public charge under the 1999 guidelines already in place. However, the change from only counting these programs when people are “primarily dependent” on them to counting them when someone receives as little as \$1,821 per year, even if combined with income from employment, means that further justification is needed. Keeping these benefits in the public charge determination will continue to be detrimental to children and families’ economic stability.

The goal of SSI is to offset the financial burden associated with disabilities for families with limited incomes and resources.³⁵⁸ Continuing to include SSI benefits in the public charge determination is not only cruel to children with disabilities and to the families caring for them, it’s short sighted. SSI enhances the opportunity for a child with disabilities to achieve an independent and rewarding life. Once a child begins receiving SSI, the likelihood they will experience poverty decreases by about 11 percent.³⁵⁹ Families receiving SSI relied less on other benefits such as SNAP, WIC, and TANF.³⁶⁰

While the overwhelming majority of TANF recipients are children, fewer and fewer children are receiving cash assistance, with just under 25 percent of all poor families with children receiving cash assistance today.³⁶¹ Keeping TANF as part of the public charge determination will only further restrict the limited access that children and families have to cash assistance. Reaching economic security is a long road for many families. While parents and caregivers are working towards upward mobility, we need to ensure that every family is provided with enough cash assistance to provide sufficient resources for children while their brains are undergoing critical stages of development. The proposed rule also fails to recognize that states are increasingly choosing to provide supplemental TANF benefits to working families who earn too much to qualify for the basic cash assistance programs. Research has shown that such policies that “make work pay” improve employment outcomes because they serve as an effective incentive for families to find and keep jobs.³⁶²

SNAP

The inclusion of SNAP as a listed program is not justified. The proposed rule fails to recognize that many people receive SNAP as a supplement to earnings. It is inconsistent with the SNAP statute which states that “the value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws,”³⁶³ and inconsistent with Congressional actions to expand SNAP eligibility to immigrant children.

³⁵⁸ Council on Children with Disabilities, *Supplemental Security Income (SSI) for Children and Youth with Disabilities*, American Academy of Pediatrics, 2009, <http://pediatrics.aappublications.org/content/124/6/1702>.

³⁵⁹ Mark Duggan, Melissa Schettini Kearney, *The Impact of Child SSI Enrollment on Household Outcomes: Evidence from the Survey of Income and Program Participation*, The National Bureau of Economic Research Working Paper No. 11568, 2007, <http://www.nber.org/papers/w11568>.

³⁶⁰ Mark Duggan, Melissa Schettini Kearney, *The Impact of Child SSI Enrollment on Household Outcomes: Evidence from the Survey of Income and Program Participation*, The National Bureau of Economic Research Working Paper No. 11568, 2007, <http://www.nber.org/papers/w11568>.

³⁶¹ Ife Floyd, LaDonna Pavetti, Liz Schott, *TANF Reaching Few Poor Families*, Center on Budget and Policy Priorities, 2017, <https://www.cbpp.org/research/family-income-support/tanf-reaching-few-poor-families>.

³⁶² Charles Michalopoulos, *Does Making Work Pay Still Pay? An Update on the Effects of Four Earnings Supplement Programs on Employment, Earnings, and Income*, MDRC, 2005, <http://www.mdrc.org/publications/414/full.pdf>.

³⁶³ 7 USC 2017(b), *Benefits not deemed income or resources for certain purposes*, <https://www.law.cornell.edu/uscode/text/7/2017>.

Moreover, the rule does not take into account any of the harms that will be caused by the inclusion of SNAP. As discussed in detail elsewhere in these comments, the reduced use of SNAP by both those subject to the public charge determination and those affected by the chilling effect will lead to harms to the health and well-being of citizen children as well as the immigrants themselves, additional costs to health care systems, and increased costs on public schools and public health care providers.

Medicaid

The inclusion of Medicaid as a listed program is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent. It completely fails to recognize the reality of low-wage work in the U.S. and the fact that just one-third of low-wage workers (those in the first quarter of the earnings distribution) have access to employer-sponsored insurance through their jobs.³⁶⁴ The rule tries to justify the inclusion of Medicaid based on the high costs of health care, but does not recognize that immigrants use less health care, on average, than U.S. born residents.³⁶⁵

Moreover, the rule does not take into account any of the harms that will be caused by the inclusion of Medicaid. As discussed in detail elsewhere in these comments, the reduced use of Medicaid by both those subject to the public charge determination and those affected by the chilling effect would lead to major harms to the health and well-being of citizen children as well as the immigrants themselves, additional costs to health care systems, public health care providers, schools, and society as a whole.

DHS proposes to exempt certain services provided under Medicaid from consideration in the public charge determination, those received for an “emergency medical condition” and those provided under the Individuals with Disabilities Education Act (IDEA) or through school-based benefits. In addition, benefits provided to certain children of U.S. citizens or children in the process of adoption will not be counted. While the intent of these exceptions -- to reduce the harm to health care providers and schools-- is worthy, the reality is that these provisions are far too complicated and confusing to actually mitigate the harm. For example, as explained at 83 FR 51170, in order to for a school to receive reimbursement for IDEA services, parents must consent for their personally identifiable information to be shared with Medicaid. It is difficult to imagine any immigrant parent providing this consent if the NPRM is finalized.

Medicare Part D low-income subsidies.

The inclusion of this program is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent. DHS’ sole justification for inclusion of Low-Income Subsidies under Medicare Part D appears to be that it has a large overall cost to the U.S. Government. However, only immigrants who have a work history of 40 quarters in the U.S. (as individuals or through their spouse) will qualify for Medicare in the first place. DHS is not able to make any estimate of how many non-citizens qualify for

³⁶⁴ Bureau of Labor Statistics, *Healthcare benefits: Access, participation, and take-up rates*, 2018, <https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table09a.htm>.

³⁶⁵ Lila Flavin, et al., “Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review,” *International Journal of Health Services*, (2018), http://www.pnhp.org/docs/ImmigrationStudy_IJHS2018.pdf_

the Low-Income Subsidies.

However, inclusion of this program could give DHS the justification for excluding nearly anyone as a public charge if they so choose. Incorporation by reference of this program into the “likely at any time to become a public charge” definition at 212.21(c) means that an immigration officer could potentially find that nearly anyone -- if they lived and worked long enough -- would eventually receive low-income subsidies, as nearly 30 percent of all Medicare Part D enrollees do.³⁶⁶ It is absolutely horrifying to think that someone who worked and contributed in the U.S. for 10 years or more could be considered a “public charge” because at the end of that time, they applied for low-income subsidies to help pay for prescription drugs.

Housing Benefits

The inclusion of these housing programs is not justified. The proposed rule is inconsistent with the history of how public charge has been understood and with Congressional intent.

The rule does not take into account any of the harms that will be caused by the inclusion of housing programs. As discussed in detail elsewhere in these comments, the reduced use of Medicaid by both those subject to the public charge determination and those affected by the chilling effect would lead to major harms to the health and well-being of citizen children as well as the immigrants themselves. Having safe and stable housing is crucial to a person’s good health, sustaining employment, and overall self-sufficiency. Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and mental health problems.³⁶⁷

Other benefits

At 83 FR 51173, the Department asks about unenumerated benefits -- both 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.

At 83 FR 51174, the Department specifically requests comment on whether the Children’s Health Insurance

³⁶⁶ Juliette Cubanski, Anthony Damico, and Tricia Neuman, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing*, Kaiser Family Foundation, 2018, <https://www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/>.

³⁶⁷ Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, Center on Budget and Policy Priorities, 2015, <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-longterm-gains>; and Linda Giannarelli et al., *Reducing Child Poverty in the US: Costs and Impacts of Policies Proposed by the Children’s Defense Fund*, (2015), <http://www.childrensdefense.org/library/PovertyReport/assets/ReducingChildPovertyintheUSCostsandImpactsofPoliciesProposedbytheChildrensDefenseFund.pdf>.

Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP. 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 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. Section 214 of the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care.

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. Senator Orrin Hatch (R-UT), one of the original co-sponsors of CHIP, said that “Children are being terribly hurt and perhaps scarred for the rest of their lives” and that “as a nation, as a society, we have a moral responsibility” to provide coverage. 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.”³⁶⁸

As noted by the Kaiser Family Foundation, CHIP:

- Can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.
- Improves health which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.³⁶⁹

³⁶⁸ Lara Shore-Sheppard, *Medicaid and CHIP: Filling in the Gap in Children's Health Insurance Coverage*, Econofact, 2018, <https://econofact.org/filling-in-the-gap-of-childrens-health-insurance-coverage-medicaid-and-chip>.

³⁶⁹ Kaiser Family Foundation, *The Impact of the Children’s Health Insurance Program (CHIP): What Does the Research Tell Us?*, 2014, <https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/>.

Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.³⁷⁰ As noted by the Center for Children and Families: A child’s experiences and environments early in life have a lasting impact on his or her development and life trajectory. The first months and years of a child’s life are marked by rapid growth and brain development.³⁷¹

Overall, we believe the benefits of excluding CHIP and Medicaid certainly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

Thresholds

At 212.21(b)(1), the regulation proposes a 15% of the FPL as a threshold for when “monetizable” benefits should be counted. CLASP strongly opposes the use of this threshold. This proposed threshold is arbitrary, with zero basis in either legislation or research. DHS acknowledges that in other contexts, such as the determination of whether an individual is a dependent for tax purposes, or HHS’s indicators of welfare dependence, the test that is applied is whether the individual or household receives more than half of their total annual income from the designated source. These determinations are based on statute, in the case of the IRS, and the recommendations of a bi-partisan Congressionally mandated Advisory Board comprised of established a 12-member bipartisan Advisory Board, composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and representatives of other organizations concerned with welfare issues, in the case of the indicators report.³⁷²

However, DHS rejects this definition simply because it “**believes** that receipt of such benefits even in a relatively small amount or for a relatively short duration would in many cases be sufficient to render a person a public charge.” (83 FR 51164 -- emphasis added). The only justification provided for the lower threshold is that the current policy is “insufficiently protective” of the public budget, which is not a relevant factor for DHS to take into account.

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

³⁷⁰ Elisabeth Wright Burak, *Promoting Young Children’s Healthy Development in Medicaid and the Children’s Health Insurance Program (CHIP)*, Georgetown Center for Children and Families, 2018, <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

³⁷¹ Elisabeth Wright Burak, *Promoting Young Children’s Healthy Development in Medicaid and the Children’s Health Insurance Program (CHIP)*, Georgetown Center for Children and Families, 2018, <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

³⁷² Department of Health and Human Services, *Indicators of Welfare Dependence and Well-Being. Interim Report to Congress*, 1996, <https://eric.ed.gov/?id=ED461676>.

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.³⁷³ Yet the rule would still consider the receipt of assistance as a heavily weighed negative factor in the public charge determination.

At 83 FR 51165, the Department seeks input on whether to consider the receipt of designated monetizable public benefits at or below the 15 percent threshold. CLASP strongly opposes taking into account any receipt of benefits below the designated threshold. As DHS acknowledges in the preamble, consideration of any lower level of benefits could have significant unintended consequences.

Similarly, at 212.21(b)(3), DHS proposes that any receipt of “monetizable” benefits would be counted when combined with receipt of “non-monetizable” benefits for at least 9 months. This would have a similar effect to having no threshold at all, as people would be afraid to apply for and receive any benefits, no matter how token, for fear of it being held against them. There is no justification for not using the already outrageously low threshold in this circumstance as well.

Exemptions

Individuals in the armed forces. At 212.21(b)(4), the regulation proposes not to consider any benefit received by an individual serving in the Armed Forces, or if received by such an individual’s spouse or child. We believe that this exception shows the fundamental problem with the rule: Armed Forces members are working individuals receiving benefits to supplement their work. This is true for many other groups of workers who provide our society with needed services for which they receive low pay. All should have the opportunity to get health and nutrition support.

Non-citizen children. At FR 51174, the Department asks about public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. CLASP strongly believes that receipt of benefits as a child should not be taken into account in the public benefits determination as it provides little information on 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 contribute to the future integration and contribution to society of kids who grow up, develop, learn and complete their education and training in the United States. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such as SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.³⁷⁴

Investing in children is the most important investment we can make in our country’s future. It is not only cruel, but counterproductive to penalize a child for being a child. Moreover, negatively weighing a child’s enrollment in health and nutrition programs would be counter to Congressional intent under both the 2009 CHIPRA and section

³⁷³ David Bier, *New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient*, The Cato Institute, 2018, <https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>.

³⁷⁴ Marianne Page, *Safety Net Programs Have Long-Term Benefits for Children in Poor Households*, University of California, Davis, 2017, https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf.

4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children.

Timeline

At FR 51174, the Department 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 not be implemented at all, but if it is, implementation should be delayed for as long as possible. It is standard practice for government agencies to spend years before implementing major changes. For example, the Advance Planning Document process for technology procurements that involve federal financial participation indicates that it will take a three-year period between the start of the planning process and the actual rollout of new technologies.³⁷⁵ In many cases, implementation timelines must be further extended due to unanticipated delays and other challenges.³⁷⁶

The proposed new form I-944 suggests that agencies would be asked to provide individuals with information on the total amount of benefits received, the exact dates and household composition, as well as information regarding whether any of the benefits count as Medicaid for emergency medical conditions or otherwise fall into one of the exceptions to the overall rule. This would be extremely burdensome for agencies, increase administrative costs, and delay them in the performance of their actual responsibilities. Moreover, in the case of programs that have shifted data systems in recent years, it may not be possible to extract this information from legacy systems no longer in use.

In addition, states, counties and cities will also need to update forms and notices and train their staff on the many questions that applicants will have regarding the new rules.

212.21(c) Likely at any time to become a public charge.

In this section, the Department proposes to attempt to estimate the likelihood of future use of any of the public benefits listed. This section therefore incorporates all of the problems with the broad definition of public charge proposed. For example, looking just at SNAP benefits, one study found that more than half of all people in the U.S. would use SNAP benefit at some point in their adult (20-65) life.³⁷⁷ Therefore, if DHS were to take this definition seriously, it could reject nearly all applicants for permanent status as at risk of at someday receiving one of these benefits. Alternatively, there is a real risk that this definition would be used arbitrarily, creating an excuse for DHS to deny immigration benefits to anyone it deems undesirable.

³⁷⁵ U.S. Department of Agriculture, FNS Handbook 901 The Advance Planning Document Process: A State Systems Guide to America’s Food Programs, Version 2.0, 2017, https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf.

³⁷⁶ See, e.g., Victoria Wachino, Kevin Concannon, et al., Letter to Medicaid, Children’s Health Insurance Program, and Health and Human Services Directors and State Marketplace CEOs, July 20, 2015, U.S. Department of Health and Human Services, U.S. Department of Agriculture, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd072015.pdf>.

³⁷⁷ Rank MR and Hirschl TA, *Likelihood of using food stamps during the adulthood years*, 2005, Journal of Nutrition Education and Behavior, <https://www.ncbi.nlm.nih.gov/pubmed/15904577>.

In addition, the preamble language at 83 FR 51174, the Administration acknowledges that “its proposed definition of public charge may suggest that DHS would automatically find an alien who is *currently* receiving public benefits, as defined in this proposed rule, to be inadmissible as likely to become a public charge.” It claims that this is not the case: “DHS does not propose to establish a *per se* policy whereby an alien is likely at any time to become a public charge if the alien is receiving public benefits at the time of the application for a visa, admission, or adjustment of status.” However, this appears to be a distinction without a difference, as given the heavy weight applied to both recent and current receipt of benefits, it is difficult to imagine any circumstances in which a person currently receiving benefits would not be found to be a public charge under DHS’s proposed definitions.

212.21(d) Definition of household

In this section, DHS proposes a novel definition of a household that includes people to whom an immigrant provides financial support, even if they do not live with the immigrant. This definition is then used in determining whether the household has income sufficient to meet the 125% and 250% of the federal poverty level thresholds that this rule creates. This can lead to several unintended and harmful consequences:

- An immigrant can, in effect, be penalized for providing family support to a sibling or parent to whom they have no legal obligation. This is true even if this support means that the sibling or parent does not need to receive public benefits that they would otherwise qualify for.
- Many immigrants provide financial support to family members who remain in their countries of origin, where the cost of living is often lower. In some countries, as little as \$100 a month could well constitute more than 50 percent of an individual’s financial support. However, this would mean that the person should be counted as part of the immigrant’s household size, which would drive up the earnings they would need to meet the threshold by much higher amounts.

Proposed section 212.22: Public Charge Inadmissibility Determination

a) Prospective determination based on the totality of circumstances.

This section accurately reflects the statutory language about the totality of circumstances. However, the subsequent listing of factors and additional criteria have the effect of undermining this intent by creating a large number of ways to fail, and very few ways to pass. For example, the discussion of public bonds at 83 FR 51221 suggests that a person with U.S. citizen family members who has a health condition, but has access to employment-based health insurance, received SNAP more than three years ago, but has not used any public benefit more recently, and has household income of 120 percent of the federal poverty line would fail the public charge test and would only qualify for admissibility if able to post a public charge bond. This example highlights the ways in which this rule, while claiming to maintain the totality of circumstances test, would actually make it nearly impossible for low-and moderate-income individuals to qualify.

(b) Minimum factors to consider.

We strongly oppose the addition of additional criteria to the statutory totality for the circumstances test.

(1) Age

While age is one of the statutory criteria to include in the public charge test, the proposal to treat being under age 18 or over age 61 as a negative factor is arbitrary.

For children, branding them a public charge because they are not working now would make a mockery of the claim that this is a forward-looking test; unemployment at age 16 or 17 provides zero evidence of their future employability. Similarly, the very data that DHS offers regarding the higher levels of public benefit use by children than for adults is further proof that use of benefits by children does not indicate that they will continue to use them as adults. It is axiomatic that children in their first years of life are more likely to qualify for means-tested benefits, such as SNAP and health care. But that has no applicability to a 15-year-old's likelihood of qualifying for benefits after immigrating. The Department cites no authority for its assertion that applicants who obtain LPR status are no more likely to become public charges simply due to their being under 18 years of age at the time of application. As discussed above, we do not believe that any receipt of benefits by children should be taken into account for the public charge determination; similarly, their age should not be held against them.

At the older end of the spectrum, it is arbitrary to treat age as a negative factor starting at age 62. DHS bases this on the minimum age at which one can start to claim retirement benefits under social security; however, this was never meant to be used to say that people are unable or even unlikely to work after that age. Moreover, only a few immigrants will have the work history to claim social security at this age. Census data confirm that immigrants are more likely to work at older ages than native-born workers.³⁷⁸ DHS provides no justification for its choice of the minimum retirement age rather than the Medicare eligibility age, the full retirement age, or any other possibility.

(2) Health

While health has always been a factor in the public charge test, the proposed rule codifies and unduly weights the specific standard for evaluating an individual's health. The new standard includes any medical condition likely to require extensive medical treatment or institutionalization or that will interfere with a person's ability to provide and care for him- or herself, to attend school, or to work. This category will include most people with disabilities – including people with intellectual and developmental disabilities, psychiatric disabilities, or physical disabilities who need personal care services. Thus, most people with disabilities will have this factor weigh against them in the public charge determination.

The harmful impact of this new health standard is intensified against people with disabilities when combined with a person's ability to pay for their health care costs (an element in the assets factor) and with the ability to pay for medical costs or have them covered under private insurance (a "heavily weighed negative factor"). In sum, this new interpretation of the health factor, particularly when combined with the other components related to health in the proposed rule, will exclude people simply because they have a disability. Moreover, the inclusion of health in this way creates a huge incentive for people to avoid treatment, especially for mental illness and other "invisible illnesses."

³⁷⁸ U.S. Census Bureau, *CPS Table Creator*, <https://www.census.gov/cps/data/cpstablecreator.html>.

(3) Family status

Under the heading of “family status” DHS proposes to consider the number of people in a household as defined in the proposed 212.21(d). It appears that having a large household will be counted as a negative factor in itself, in addition to making it harder for families to achieve the income thresholds required to avoid a negative factor under “assets, resources and financial status.” This is double counting of the same factor, which will make it harder for immigrants to avoid being considered a public charge. As noted previously, this will also have the perverse effect of discouraging people from supporting family members. For example, if a couple with one child who has an income just over the 250 percent of poverty threshold for a family of 3, takes in a brother who is temporarily unemployed and do not charge rent, they will become a household of four and their income would no longer qualify as a heavily weighed positive factor.

It is important to note that this is a radical change from how “family status” has historically been treated as part of the public charge test. Historically, having family members who give you strong ties to the United States and who can be expected to help support you has always been treated as a *positive* factor under the totality of circumstances test. This understanding is reflected in the finding in the *Matter of Martinez-Lopez*, as discussed at 83 FR 51178-79. In this case, the Attorney General found it a positive factor that “the respondent had a brother and other close family members who could provide financial support.” As written, the proposed rule does not allow for family status to be a positive factor in the totality of circumstances.

(4) Assets, resources and financial status

In this section, DHS lists a large number of criteria that will be taken in account in assessing assets, resources and financial status. It proposes to treat failing each of these criteria as a separate “strike” against an immigrant that must be offset by a corresponding positive factor. However, these circumstances are highly correlated, and DHS has provided no evidence to suggest that each of them has predictive value when others have already been taken into account. In practice, the multiplication of criteria under this factor has the effect of weighing this factor more heavily than any of the other statutorily mandated factors -- even beyond the additional weighting DHS explicitly proposes of certain elements of this factor.

Moreover, as discussed at length in sections I and III of our comments, the new wealth test imposed by the proposed rule will disproportionately harm immigrant women and immigrants of color. Women collectively comprise two-thirds of the low-wage workforce³⁷⁹ and immigrant women are overrepresented to an even greater extent in low-wage jobs.³⁸⁰ Women are also more likely than men to raise children on their own, which means that low-wages often result in an even lower household income (based on the number of household members). Due to persisting racial economic disparities and discrimination in hiring practices, average hourly wages for black

³⁷⁹ Kayla Patrick, Meika Berlan, Morgan Harwood, *Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade*, National Women’s Law Center, 2018, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf>.

³⁸⁰ American Immigration Council, *The Impact of Immigrant Women on America’s Labor Force*, 2017, <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>; and National Women’s Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs*, 2014, https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf.

and Hispanic workers are substantially lower than their white counterparts³⁸¹ -- making it more likely that immigrants of color will be harmed by the additional negative factors related to income and financial status under the rule.

212.22(b)(4)(i)(A) Wealth Test

At FR 51187, the Department invites comments on the 125 percent of FPG threshold. The Department 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. We strongly oppose the use of this arbitrary and unreasonable threshold, which lacks any statutory basis and is contrary to clear congressional intent.

Congress did not impose an income test on the intending immigrant. In fact, Congress rejected income tests *for sponsors* at 200% FPL (and 140% FPL for a spouse or minor child of the petitioner), in favor of the lower 125% FPL test for sponsors ultimately adopted in 8 USC 1183A.³⁸² At footnote 583, the Department 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.

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% 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.

Moreover, the arbitrary use of an income threshold does not take into account the value of unpaid labor that family members may provide. For example, if a married couple family with two children earns \$32,000 per year, they would exceed this threshold. However, if they have to pay \$12,000 a year for child care (an extremely modest amount for two children), they are actually less economically secure than if they earned just \$24,000 but did not need to pay for child care because they only work opposite shifts. However, under the proposed rule, they would be considered to have a negative factor against them.

212.22(b)(4)(i)(B) and 212.22(b)(4)(ii)(I) Financial means to pay for Medical costs, including through private health insurance

Yet again, the Department is essentially penalizing people multiple times for essentially the same factor -- not only

³⁸¹ Eileen Patten, *Racial, gender wage gaps persist in U.S. despite some progress*, Pew Research Center, 2016, <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>.

³⁸² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Conference Report 104-828, Sec. 551, 1996, <https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf>; 142 Cong. Rec. S11712, 1996, <https://www.congress.gov/crec/1996/09/28/CREC-1996-09-28-pt1-PgS11711.pdf>; 142 Cong. Rec. H12096, 1996, <https://www.congress.gov/crec/1996/09/28/CREC-1996-09-28-bk2.pdf>; and H.R. Rept. 104-469, Part I, 1996, <https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf>. Congress members objected to an earlier version's requirement that a sponsor earn more than 200% of the Federal poverty income guideline, declaring that the "200% income requirement constitutes nothing less than 'class warfare,' and tells the world that immigration is only for the wealthy" (*Id.* at 544).

on their low or moderate income but also on their inability to pay for medical care. Individuals with incomes near or below the federal poverty line are at the highest risk of being uninsured. In 2016, eight in ten of the uninsured were in families with incomes below 400% FPL and nearly half of uninsured families had incomes below 200% of the FPL.³⁸³ Furthermore, requiring financial ability to pay for health care is a standard that many U.S. Citizens are unable to meet. Nearly one in two sick Americans cannot afford health care, even those with health insurance.³⁸⁴

The impact of this factor on individuals living with disabilities or chronic health conditions is even more insidious. Private insurance does not cover many disability-services and 46.4% of all people in fair or poor health are uninsured or have affordability problems despite having coverage.³⁸⁵

Like many provisions of the proposed rule, this negative factor will disproportionately affect people of color, who are at higher risk of being uninsured. Hispanics and Blacks have significantly higher uninsured rates (16.9% and 11.7%, respectively) than Whites (7.6%).³⁸⁶

212.22(b)(4)(i)(C) and 212.22(b)(4)(ii)(F) Applying for, receiving, or being approved to receive public benefits, as defined in the proposed CFR 212.21(b)

In this section, DHS proposes to take into account any receipt of -- or application for or approval for -- any of the specified public benefits on or after the effective date of the final rule, no matter how long ago it occurred, or whether the immigrant was a child at the time of receipt.

In the preamble at 83 FR 51188, DHS attempts to make this inclusion consistent with the totality of circumstances test by noting that benefits received longer ago, and for shorter periods of time, would be weighed less than more recent or longer use of benefits, and by suggesting that previous use of benefits could be overcome by more recent factors. However, this language is not reflected in the regulatory text. DHS attempts to justify this section by saying that most people who receive benefits do so for an extended period of time, but that data is irrelevant (and also from the period of highest unemployment in recent history). DHS provides no evidence that supports the claim that someone who received benefits 5 or even 10 years ago but who has not received them more recently is more likely to receive benefits than someone who never received them in the first place.

As discussed at length in sections II of our comments, numerous studies point to the positive long-term effects of receipt of health, nutrition and housing programs.³⁸⁷ The proposed rule ignores the fact that public programs are

³⁸³ Kaiser Family Foundation, *Key Facts about the Uninsured Population*, 2017, <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

³⁸⁴ Drew Altman, *It's not just the uninsured — it's also the cost of health care*, 2017, <https://www.axios.com/not-just-uninsured-cost-of-health-care-cdc4c02-0864-4e64-b745-efbe5b4b7efc.html>.

³⁸⁵ Drew Altman, *It's not just the uninsured — it's also the cost of health care*, 2017, <https://www.axios.com/not-just-uninsured-cost-of-health-care-cdc4c02-0864-4e64-b745-efbe5b4b7efc.html>.

³⁸⁶ Kaiser Family Foundation, *Key Facts about the Uninsured Population*, 2017, <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

³⁸⁷ Tazra Mitchell and Arloc Sherman, *Economic Security Programs Help Low-Income Children Succeed Over Long Term, Many Studies Find*, Center on Budget and Policy Priorities, 2017, <https://www.cbpp.org/research/poverty-and-inequality/economic-security-programs-help-low-income-children-succeed-over>.

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.

The consideration of any use of public benefits, no matter how long ago, will greatly increase the chilling effect of this rule. Many lawfully present immigrants who have no immediate path to legal permanent residency status nonetheless hope that they may someday have this option. If they fear that receipt of health care or nutritional supports today could affect their options years --- or even decades -- down the road, they will be unwilling to participate in these programs, even if it puts their health and well-being at risk.

The lack of clarity about how it will be possible to overcome negative factors means that the proposed rule will have a much greater chilling effect -- making immigrants afraid to access public benefits even if those supports would help them thrive and become more stable in the future. For example, the proposed rule gives an example of an immigrant who has received benefits in the past and is now unemployed, but is graduating college and has a pending offer of employment with benefits, and says that "it is possible that in the review of the totality of the circumstances, the alien would not be found likely to become a public charge." A straightforward reading of the totality of circumstances test is clearly that the circumstances that led to use of benefits are about to change, and that such an individual is not at risk of become a public charge. However, the anemic language offered in the proposed rule, that it is "possible" this individual will not be found a public charge, makes it impossible to offer this person assurances that they will not be penalized for having received benefits. Moreover, because having been previously found to be a public charge is itself a heavily weighed negative factor, if rejected, this individual will find it even harder to be approved in the future.

212.(b)(4)(ii)(G) Fee waivers

Under the proposed rule, the use of a fee waiver (Form I-912) for any immigration benefit would be considered a negative factor in determining an immigrant's financial status. We strongly oppose consideration of fee waivers in the public charge determination. The consideration of fee waiver usage is improperly retroactive. The statute calls for a forward-looking analysis of whether the immigrant is likely to become a public charge in the future. Because a fee waiver is not a continuing benefit, the proposed rule's consideration of *prior* receipt of a fee waiver impermissibly penalizes applicants for their financial status on the date of the application for the fee waiver and not on the date of application for admission, adjustment of status, or for a visa.

Separate consideration of the use of a fee waiver means that applicants with low income would be penalized twice for the same factor. An immigrant who received a fee waiver based on their household income would have two strikes against them for what is essentially the same factor -- one strike for the low income and a second for the fee waiver granted because of the applicant's low income. As a result, consideration of the use of a fee waiver has the unintended effect of double-counting negative factors related to financial status.

212.(b)(4)(ii)(H) Credit history and credit scores

At FR 51189, the Department 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.³⁸⁸ 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.³⁸⁹ 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 USCIS to consider, and studies show that even when immigrants do have credit histories, their credit scores are artificially low.³⁹⁰

(5) Education and skills

The rule proposes to count as evidence of education and skills the immigrant's history of employment, whether the individual has a high school degree (or its equivalent) or higher education, and whether the individual has occupational skills, certifications or licenses. While these are all reasonable to consider as contributing factors, it is critical that they not be treated as separate elements, but as distinct ways to prove education and skills.

For example, consider an immigrant who has recently graduated college and has limited work history and no professional license. However, because of her grades and major, she has a strong prospect of employment. This should be considered a positive factor in its totality, rather than the lack of work history or license being held against her. Alternatively, another immigrant might not have graduated high school due to the lack of educational opportunities in his home country but has a long history of work as a landscaper. Again, this should be considered a total positive factor, rather than considered a mix of positive and negative factors.

Treating each of these elements as separate factors is inconsistent with Congressional intent and the general concept of a totality of circumstances. In fact, it would be a backdoor way to enact the RAISE Act, which would award points to potential immigrants based on their age, English language fluency, levels of education and majors. President Trump has advocated for this proposal and contrasted it with what he describes as "today's low-skill system, just a terrible system where anybody comes in."³⁹¹ However, this bill only received support from three Senators, and was never even heard in committee.³⁹²

³⁸⁸ Consumer Financial Protection Bureau, *Data Point: Credit Invisibles*, 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).

³⁸⁹ Chi Chi Wu, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession*, National Consumer Law Center, 2013, www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

³⁹⁰ Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit*, 2007, <https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf>.

³⁹¹ The White House, "President Donald J. Trump Backs RAISE Act," August 2, 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>.

³⁹² U.S. Congress, "S.1720 - RAISE Act," August 2, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1720>.

(D) English Language Requirement

As discussed at length in section I of our comments, adding English Proficiency as a factor in the public charge test is a fundamental change from our historic commitment to welcoming and integrating immigrants. The public charge test applies to people when they first enter the U.S. or apply for lawful permanent residence. People from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English. Congress did not impose an English language test on applicants for lawful permanent residence. Instead, our immigration laws explicitly require an English test for lawful permanent residents who have lived in the U.S. for a number of years--when they apply to become a U.S. Citizen. And, Congress has supported our nation's commitment to welcoming and integrating immigrants by authorizing funds to support English language learners.³⁹³

DHS cites the 2014 Survey of Income and Program Participation (SIPP) data about the use of benefits by populations at various levels of English language ability. Yet DHS fails to provide any causal linkage between the data cited and its conclusions and fails to consider alternative reasons why people who are more limited English proficient may be more likely to secure services. For example, states such as New York and California, which have higher numbers of LEP populations, also have higher income thresholds for Medicaid. In addition, DHS claims that "numerous studies have shown that immigrants' English language proficiency or ability to acquire English proficiency directly correlate to a newcomer's economic assimilation into the United States," yet three out of the four studies cited use data derived from Europe, while the fourth relies on Current Population Survey data, which is nearly 30 years old. This evidence is insufficient to support DHS' proposed change.

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.³⁹⁴

Finally, by giving de-facto preference to individuals from English speaking nations, the proposed regulation disproportionately harms populations with high levels of limited English proficiency. DHS is effectively reworking the careful balancing that Congress created to move the country away from the racist quota system. In particular, this standard disproportionately impacts Asian immigrants. Asian people in the U.S. have the highest rates of limited English proficiency. Nearly three out of four Asians speak languages other than English at home, and 35 percent have limited English proficiency.³⁹⁵

³⁹³ U.S. Department of Labor, *Education and Training Administration Training and Education Notice*, 2017, https://wdr.doleta.gov/directives/attach/TEN/TEN_28-16_Change_1.pdf.

³⁹⁴ Jennifer Ludden, *Barriers Abound for Immigrants Learning English*, National Public Radio, 2007, <https://www.npr.org/templates/story/story.php?storyId=14330106>.

³⁹⁵ Karthick Ramakrishnan and Farah Z. Ahmad, *State of Asian Americans and Pacific Islanders Series*, Center for American Progress, 2014, <https://cdn.americanprogress.org/wp-content/uploads/2014/09/AAPIRReport-comp.pdf>.

(7) Affidavit of support

At 51198, the Department clarifies that under the proposed rule, it would only consider the affidavit of support as one factor in the totality of the circumstances. The Department also indicates that it will scrutinize the relationship of the sponsor to the applicant, looking at both familial status and whether or not the sponsor lives with the applicant, suggesting without citing a single basis for support, that “this could be indicative of the sponsor’s willingness to support the alien.” CLASP opposes this dramatic shift from decades of established practice and policy.

A properly filed I-864 has long been considered sufficient to overcome public charge concerns in the totality of the circumstances analysis.³⁹⁶ Guidance in the Foreign Affairs Manual explained that a joint sponsor “can be a friend or a non-relative who does not reside in and is not necessarily financially connected with the sponsor’s household.”³⁹⁷ This guidance was consistent with the statutory language at 8 U.S.C. § 1183a which defined the requirements of a “sponsor” but does not include a requirement that a joint sponsor have a familial relationship to the immigrant.

The information provided on the Affidavit of Support is intended to allow the government to determine whether the applicant has adequate means of financial support in the United States. The form itself is considered a contract between the visa applicant and the sponsor, as well as between the sponsor and the United States government, in which the sponsor promises to support the applicant if he or she is unable to do so on his or her own. That promise is essential; an immigrant who can depend on a reliable source of support from a sponsor is dramatically less likely to need any public benefits.

(c) Heavily weighed factors

The Department’s proposal to heavily weigh certain factors is inconsistent with the statutory language which does not provide any basis for weighing some factors more heavily than others. Moreover, the proposed rule fails to heavily weigh the only factor that is singled out in statute as absolutely essential -- the provision of a valid affidavit of support.

The rule only proposes one heavily weighed positive factor – that the household has or will make at least 250% of the Federal Poverty Guidelines. This means that low- and middle-income families will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.

(1) Heavily weighed negative factors

(i) “The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or no reasonable prospect of future employment”

CLASP opposes this heavily weighed factor as it deeply penalizes individuals who are caregivers, whether for children, seniors, or other family members. Such caregiving work is often a major contribution to the financial as

³⁹⁶ See, e.g., 9 FAM § 302.8-2(B)(3)

³⁹⁷ 9 FAM § 302.8-2(C)(7)

well as emotional well-being of a family, as paid care of the same quality would cost thousands of dollars. Unpaid caregiving is often essential for other family members to work.³⁹⁸ Unpaid caregiving for seniors also saves government programs billions of dollars, both by substituting for paid caregivers and by preventing the need for nursing home care.³⁹⁹

This provision disproportionately impacts women and individuals living with disabilities. Women are far more likely to be caregivers for both children and seniors. For people living with disabilities, unemployment rates in the United States are drastically higher than those for people without disabilities,⁴⁰⁰ and the disparity is even more dramatic internationally.⁴⁰¹ Similarly, many people with disabilities around the world have been denied access to equal educational opportunities, putting them at a significant disadvantage with respect to this factor.

(ii) “The alien is current receiving or is currently certified or approved to receive one or more public benefit, as defined in 212.21(b)” and (iii) “The alien has received one or more public benefit, as defined in 212.21(b), within the 36 months immediately preceding the alien’s application for a visa, admission, or adjustment of status.”

The agency’s proposal to heavily weigh receipt of benefits – including benefits previously considered – is deeply problematic and inconsistent with the plain meaning of the statutory totality of the circumstances test. The public charge determination was designed to be a narrow tool to identify individuals likely to become primarily dependent on the government for support. The test was never designed to prevent immigration of low- and moderate-income families that may at some point need access to public programs that provide support which allows them to help them continue working. Even if an individual has received cash assistance or long-term care at government expense, the agency must assess the individual’s overall circumstances with respect to the future likelihood of the applicant becoming a public charge.

The inclusion of previous and current use of benefits as *separate* heavily weighed factors is a further abuse of the totality of circumstances test. Congress did not direct DHS to weigh use of benefits more heavily than other factors, and counting it twice adds yet further weight to this factor.

The studies cited in the preamble to the proposed rule (83 FR 51199) that indicate that families that 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. When the preamble says that “of those who left Medicaid,” the accurate description of the population would be “of those who stopped receiving cash assistance and also lost Medicaid coverage in spite of specific Congressional intent to delink these benefits.” These studies provide zero evidence that previous receipt of the newly added benefits is an indicator of future use.

At 83 FR 51200, the Department asks whether 36 months is the right lookback period for considering previous use of public benefits and whether a shorter or longer timeframe would be better. We strongly oppose any arbitrary

³⁹⁸ Lynda Laughlin, *Who’s Minding the Kids? Child Care Arrangements: Spring 2011*, Household Economic Studies, U.S. Census Bureau, 2013, <https://www2.census.gov/library/publications/2013/demo/p70-135.pdf>.

³⁹⁹ R. Schulz, J. Eden, “Economic Impact of Family Caregiving”, Committee on Family Caregiving for Older Adults; Board on Health Care Services, National Academies Press, (2016) <https://www.ncbi.nlm.nih.gov/books/NBK396402>.

⁴⁰⁰ U.S. Dep’t of Labor’s Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics -2017*, <https://www.bls.gov/news.release/pdf/disabl.pdf>.

⁴⁰¹ World Health Organization, The World Bank, *World Report on Disability*, 235 - 237 (2011), http://www.who.int/disabilities/world_report/2011/report.pdf.

lookback period for use of public benefit programs. Inclusion of a retrospective test is fundamentally inconsistent with the 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.

(iv) (A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work;

CLASP strongly opposes this provision of the proposed rule as it targets individuals with disabilities, effectively treating disability as an inadmissible category. This heavily weighed factor is tantamount to saying that disability itself is a heavily weighted negative factor, as significant chronic medical conditions are usually disabilities.^{402, 403} By treating immigrants with disabilities as public charges, the proposed rule would reinforce prejudice and negative attitudes towards all people with disabilities, viewing them as burdens on society. This punitive and prejudicial approach would reverse decades of disability discrimination law and add to the stigma and discrimination experienced by all individuals who have a disability.

(iv) (B) The alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a medical condition”

Here again, the proposed rule employs circular reasoning to disproportionately harm individuals living with disabilities. Individuals with disabilities are significantly less likely to have non-subsidized health insurance than those without disabilities (41 % compared to 74 %).⁴⁰⁴ Individuals with disabilities often rely on Medicaid/CHIP or the ACA exchanges either because they lack access to other forms of insurance because of their disability,⁴⁰⁵ or because private insurance may not cover services they need due to their disability, such as durable medical equipment or occupational therapy.⁴⁰⁶ Medicaid also provides wrap-around services to children with disabilities, allowing children to stay at home.⁴⁰⁷ For many individuals with a disability, access to government health insurance

⁴⁰² Under Sec. 504 of the Rehabilitation Act, which prohibits discrimination by federal agencies, an individual has a disability if he or she has a “(a) physical or mental impairment that substantially limits one or more major life activities of such individual, (b) a record of such an impairment; or “[is]regarded as having such an impairment.” 29 U.S.C. 705 referencing 42 U.S.C. 12102; 29 U.S.C. 12102.

⁴⁰³ The INA lists health as a factor for public charge, but by treating all chronic medical conditions in persons without unsubsidized health insurance as heavily weighted negative factors, and considering the health of dependents with disabilities, the PR go far beyond the scope of the INA in giving adverse weight to disability.

⁴⁰⁴ MaryBeth Musumeci & Julia Foutz, *Medicaid Restructuring under the American Health Care Act and Nonelderly Adults with Disabilities*, Kaiser Family Foundation Issue Brief, March 2017, <http://files.kff.org/attachment/Issue-Brief-Medicaid-Restructuring-Under-the-American-Health-Care-Act-and-Nonelderly-Adults-with-Disabilities>.

⁴⁰⁵ Studies undertaken prior to the ACA showed that less than half of individuals with significant disabilities had far lower rates of insurance coverage than the general population. National Council on Disability, *The Current State of Health Care for People with Disabilities* (2009), <https://www.ncd.gov/publications/2009/Sept302009#Health%20Coverage%20and%20Benefits>.

⁴⁰⁶ MaryBeth Musumeci, Julia Foutz, *Medicaid’s Role for Children with Special Health Care Needs: A Look at Eligibility, Services and Spending*, Kaiser Family Foundation, Issue Brief, Feb. 2018, <https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/>.

⁴⁰⁷ MaryBeth Musumeci, Julia Foutz, *Medicaid’s Role for Children with Special Health Care Needs* Id.

is critical to their ability to live independently in the community, and to be self-sufficient and economically productive.⁴⁰⁸

We believe it is illogical and counterproductive to penalize people with disabilities as public charges simply for using the non-cash benefits that Congress and the states have established to enable them to participate fully in society and be self-sufficient. By so doing, the proposed rule fails to appreciate that people with disabilities often need to rely on such programs precisely because they lack access to private insurance or full-time employment due to “prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers” recognized by Congress in the Americans with Disabilities Act.⁴⁰⁹

(v) “The alien had previously been found inadmissible or deportable on public charge grounds.”

DHS provides no justification for why this should be a factor at all, let alone a heavily weighed negative factor. This is an arbitrary addition to the statutory factors that serves no purpose except to deter individuals who might conceivably be found to be a public charge from applying, for fear that such a finding would tarnish their future efforts to obtain legal permanent resident status. Imagine two immigrants both applying for status, with exactly the same income, employment history, age, family status, health condition and past use of public benefits. Suppose that one of them had applied for status a few years back and had been found to be a public charge because of their recent use of public benefits and low-income. DHS provides no valid explanation for why these two immigrants should be treated differently today.

(2) Heavily weighed positive factors

(i) The alien's household has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size; or (ii) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines (FPG) for a household of the alien's household size.

The Department proposes that income above 250 percent of the FPG be required to be counted as the single heavily weighed positive factor. USCIS provides even less justification for the 250 percent of FPL threshold than provided for the similarly arbitrary 125 FPG threshold used as a negative factor.

The proposed 250 percent FPL threshold disregards the fundamental meaning of public charge, as well as the efforts and contributions of many workers. 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.⁴¹⁰ According to Bureau of Labor Statistics (BLS) data, the seasonally adjusted annual mean wage for private, nonfarm occupations was less than \$50,000 in October, 2018 - below 250 percent FPL for a three-person household.⁴¹¹ Among production and nonsupervisory

⁴⁰⁸ Center on Budget and Policy Priorities, Aug. 29, 2017, *Medicaid Works for People with Disabilities*, <https://www.cbpp.org/research/health/medicaid-works-for-people-with-disabilities>

⁴⁰⁹ 42 U.S.C. 12102(a)(2)

⁴¹⁰ U.S. Census Bureau, *Income and Poverty in the United States: 2017, 2018*, <https://www.census.gov/library/publications/2018/demo/p60-263.html>.

⁴¹¹ Bureau of Labor Statistics, *Table A-1. Current and real (constant 1982-1984 dollars) earnings for all employees on private*

workers, mean wage was just over \$40,000 - less than 250 percent FPL for a household of two.⁴¹² Indeed, 61% of recently admitted lawful permanent residents did not meet the 250% FPL threshold.⁴¹³

Incorporating a 250 percent FPL income level as the single heavily weighed positive factor in the public charge test would represent a fundamental change to U.S. immigration policy -- and our immigrant population. Migration Policy Institute analysis found that only 39 percent of persons recently granted LPR status had incomes at or above 250 percent FPL.⁴¹⁴

The 250 percent threshold also does not appear in immigration law, disregards work, relies on circular reasoning, has the perverse effect of discouraging people from supporting family members, and targets immigrants of color. While the Department states that persons with incomes below 250% FPL are more likely to receive public benefits, USCIS admits in footnote 583 that the differences in receipt of non-cash benefits between non-citizens 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.

Furthermore, the 250 percent threshold is based on circular reasoning: The only justification USCIS offers for this arbitrary threshold is that families earning incomes below this level are more likely to receive public benefits - and eligibility for public benefits is, of course, largely based on income. USCIS is essentially penalizing people multiple times - based on not only on their income but on their credit history, access to private health insurance, and potential need for programs like SNAP, Medicaid or housing assistance -- for the same reason: they have a low or moderate income.

The proposed 250 percent of FPL income threshold would also favor white immigrants over people of color. Only a little more than one-third (39 percent) of total recent LPRs had incomes above 250 percent of the FPL.⁴¹⁵ And, although more than half of immigrants from Europe, Canada and Oceania had incomes of at least 250 percent of FPL, only one third or less of immigrants from Mexico and Central America, the Caribbean or Africa had incomes at this level.⁴¹⁶ In other words, this threshold would likely result an immigration policy that favors white immigrants from Europe rather than Latino and Black immigrants from Mexico and Central America, the Caribbean or Africa.

Setting these income 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

nonfarm payrolls, seasonally adjusted, 2018, <https://www.bls.gov/news.release/realer.t01.htm>.

⁴¹² Bureau of Labor Statistics, *Table A-1. Current and real (constant 1982-1984 dollars) earnings for production and nonsupervisory employees on private nonfarm payrolls, seasonally adjusted*, 2018, <https://www.bls.gov/news.release/realer.t02.htm>.

⁴¹³ Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁴¹⁴ Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁴¹⁵ Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁴¹⁶ Randy Capps, et al, *Gauging the Impact of DHS's Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

that would require Congressional action-- and that Congress has chosen not to adopt.⁴¹⁷

(d) Treatment of cash assistance

In this section, DHS states that it will “consider as a negative factor **any amount** of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called “General Assistance” programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt” received before the effective date of the final rule. (Emphasis added.) Under the 1999 guidance, only receipt of such benefits to the extent that an individual was primarily dependent upon them for subsistence was taken into account. Since 1999, immigrants have relied upon this guidance -- it is unacceptable to retroactively change the test so that receipt of a modest amount of benefits by someone with other income sources would be held against them. The 1999 Guidance, in its entirety, should be applied to any receipt of benefits prior to the effective date of the final rule.

Proposed section 212.23: Exemptions and waivers for public charge ground of inadmissibility

We believe this section accurately captures the exemptions and waivers for the public charge ground inadmissibility. However, much more work is needed to ensure that immigrant communities and service providers are aware of these exemptions.

Proposed section 212.24: Valuation of monetizable benefits

Although the rule appears intended to focus only on receipt of benefits by the individual applicant, in many respects it will hurt the entire family. The regulatory text isn’t crystal clear on this point and will cause confusion, fear, administrative burdens on social services agencies. More fundamentally, families are highly likely to avoid seeking these services if they believe it could put any of them at risk.

Proposed section 213: Public charge bonds

At FR 21220, the Department invites comments about the public bond process in general. The use of public charge bonds is impractical and would place an impossible burden on immigrant families. There is no evidence demonstrating that public charge bonds will achieve the desired outcome of preventing people from becoming dependent on government assistance. Years of reliance on monetary bonds in the criminal pretrial context has demonstrated the critical importance of empirical study identifying both predictors and effective mitigators of risk.⁴¹⁸ Monetary bonds in the criminal pretrial context have been discredited as inefficient and unfair, lacking

⁴¹⁷ S.354 (115th Congress), the RAISE Act, <https://www.congress.gov/bill/115th-congress/senate-bill/354>; and Statement of President Donald J. Trump, August 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>.

⁴¹⁸ Denise L. Gilman, *To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial immigration Detention*, 2016, <https://www.repository.law.indiana.edu/cqj/viewcontent.cqj?article=11234&context=ilj>.

evidence that money motivates people to appear for court.⁴¹⁹ Moreover, public charge bonds would necessarily have a disparate negative impact on minorities, including U.S. citizens, as financially-based pretrial detention systems have had.⁴²⁰

Additionally, studies show that bonds cause long-term hardship and increase the likelihood of financial instability.⁴²¹ Public charge bonds are even more likely to cause long-term hardship, given the indefinite life of the bond.⁴²² Families will face years of annual fees, non-refundable premiums, and liens on the homes and cars put up as collateral charged by for-profit surety companies and their agents.⁴²³ Moreover, the indefinite term and extremely broad and vague conditions governing breach only heightens the risk of exploitation by for-profit companies managing public charge bonds. Impoverishing immigrants and their families will make them more, not less, likely to need assistance. Moreover, at 83 FR 51222, DHS states its intent to require surety bonds, rather than allow for cash or cash equivalent to be placed in escrow. This puts immigrants fully at the mercy of commercial bond companies, who are likely to charge excessive fees, since immigrants will have no alternative to purchasing such a bond. The cost to immigrants of acquiring such a bond (on top of the fees payable to DHS for the posting, substitution, or canceling of a bond) are not included in the cost estimate for this rule.

While DHS creates a new market segment for commercial bond companies, it leaves states and localities, responsible for regulating bond insurers and bond agents--including those issuing immigration detention bonds--holding the bag for consumer protection. Many states already struggle to adequately regulate their current bond industries.⁴²⁴ By expanding the market without any consideration for the increased burden on states and localities, DHS imposes an unfunded mandate on state and local insurance and financial services regulators.

⁴¹⁹ Gilman, *To Loose the Bonds*.

⁴²⁰ Color of Change, ACLU, *Selling Off Our Freedom: How insurance companies have taken over our bail system*, 2017, https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf; *The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions*, 2016, <http://www.opd.state.md.us/Portals/0/Downloads/High%20Cost%20of%20Bail.pdf>; Vera Institute of Justice, *Past Due: Examining the costs and consequences of charging for justice in New Orleans*, 2017, <https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans>.

⁴²¹ Color of Change, ACLU, *Selling Off Our Freedom*; Pretrial Justice Institute, *Pretrial Justice: What Does It Cost? Pretrial Justice: What Does It Cost?*, 2017, <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd&forceDialog=0>.

⁴²² Both leaked drafts of the proposed regulation revise the current regulations to eliminate the automatic cancellation of the public charge bond upon naturalization, death, or permanent departure. See 8 C.F.R. § 103.6(c)(1). Instead, DHS seeks to impose an affirmative obligation on the immigrant or obligor to request the cancellation of the bond upon naturalization, death, or permanent departure. Most LPRs are not eligible to naturalize until at least five years after becoming an LPR, and many more are unable to naturalize for longer than that for a variety of reasons.

⁴²³ *Selling Off Our Freedom*; *High Cost of Bail*; Past Due; UCLA School of Law Criminal Justice Reform Clinic, *The Devil in the Details: Bail Bond Contracts in California*, 2017, https://static.prisonpolicy.org/scans/UCLA_Devil%20in%20the%20Details.pdf; Brooklyn Community Bail Fund, *License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City*, 2017, https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf.

⁴²⁴ *Selling Off Our Freedom*, at 34-37; Jessica Silver-Greenberg, Shaila Dewan, *When Bail Feels Less Like Freedom, More Like Extortion*, New York Times, 2018, <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html?mabReward=CTM4&recid=12eCxx0XJ509HkP8Jk98Q8kEubA&recp=3&action=click&pgtype=Homepage®ion=CColumn&module=Recommendation&src=rechp&WT.nav=RecEngine>.

Proposed section 214: Nonimmigrant Classes and proposed section 248: Change of Nonimmigrant classification

The Department's proposal to require a public charge assessment of applicants to extend/change status is unnecessary and a waste of USCIS resources. Under the proposed rule, USCIS would be required to conduct public charge assessments of an estimated 511,201 individuals seeking an extension or change of nonimmigrant status each year. In each of these cases, USCIS would have discretion to require the applicant to submit Form I-944, Declaration of Self-Sufficiency. In key respects, this is duplicative of work done by the Department of State (DOS) and U.S. Customs and Border Protection (CBP). Consular offices already conduct public charge assessments of most nonimmigrants when processing their visas, and CBP conducts an admissibility determination when processing nonimmigrants at the port of entry.⁴²⁵ Requiring these forms would be burdensome to the applicants for change/extension of status, but also to USCIS, which would delay the processing of status for both these individuals and others.

In addition, many nonimmigrant classifications require the applicant to prove they can support themselves financially. F-1 and M-1 students, for example, must provide evidence of "sufficient funds available for self-support during the entire proposed course of study."⁴²⁶ B-1 and B-2 tourists also need to show that they have adequate means of financial support during the course of their stay in the U.S.⁴²⁷ Meanwhile, by definition, most employment-based nonimmigrant visas mandate sponsorship and compensation by employers. Financial stability is therefore already built into most nonimmigrant visa categories. Given these existing safeguards, any investment of USCIS resources to assess nonimmigrants on public charge would be an unnecessary administrative burden assumed by an already overstretched agency.

This proposal is yet another example of a needlessly restrictive and bureaucratic process imposed by the current administration that has fostered a growing perception among foreign nationals that the U.S. has become an undesirable destination. The proposed rule will reinforce that view, damaging the long-held perception of the U.S. as a country of welcome and chilling international travel and commerce.

Proposed section 245: Adjustment of Status to that of a Person Admitted for Permanent Residence

The proposed rule would require the agency to process Forms I-944, Declaration of Self-Sufficiency, in connection with an estimated 382,264 adjustment of status applications annually. CLASP strongly opposes the requirement of this overly broad form which will be an impossible burden for many applicants and will deepen existing processing delays.

The draft form I-944 instructions 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.⁴²⁸ This requirement includes no limit

⁴²⁵ Department of State, 9 FAM 302.8; <https://fam.state.gov/fam/09fam/09fam030208.html>.

⁴²⁶ USCIS, Students and Employment (Feb. 6, 2018); Noncitizen Eligibility for Federal Public Assistance: Policy Overview.

⁴²⁷ Department of State, Visitor Visa, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>.

⁴²⁸ U.S. Citizenship and Immigration Services, *Instructions for Declaration of Self-Sufficiency*, 2018, <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>.

on the amount or duration of benefits. The form also includes no provision limiting information required to benefits received after effective date of final rule. Furthermore, the form requires information that may not be contained in typical agency notices. With no time limit, it's likely that applicant may no longer have old notices and will need to contact the agency that administered the benefit to obtain a copy. In many cases this will require a special request to the agency to prepare an individualized letter. This will generate a huge workload for agencies and may require access to information that has been archived from no longer functional eligibility systems that have been replaced.

The proposed I-944 form will also be burdensome for individuals who must track down documentation of past receipt of benefits. Interactions with government agencies that administer benefit programs like SNAP and Medicaid can be incredibly time-consuming. For example, one study that found the average food stamp application took about five hours of time to complete, including two trips to a food stamp office.⁴²⁹ The Department's estimate that it will only take applicants 4 hours and 30 minutes to file Form I-944 and to receive certified documents is both inaccurate and out of touch with the burdens that benefit recipients face when interfacing with state and local agencies.

Requiring a Declaration of Self-Sufficiency for immigrants seeking adjustment of status to lawful permanent residence would consume significant U.S. Citizenship and Immigration Services (USCIS) resources and deepen existing delays in immigration benefit form processing. The Department's time estimate for completing the I-944 purportedly includes "the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration." However, this appears to be grossly underestimated. In addition to preparing the form and gathering supporting documentation from agencies which provided public benefits to an applicant at any time in the past, the time spent by lawyers to advise, document and fill out forms will increase significantly. Lawyers must assess every factor in the rule that might impact the public charge assessment.

These operational demands would be levied upon an agency that already suffers profound capacity shortfalls. With nearly 6 million pending cases as of March 31, 2018, DHS has conceded that USCIS lacks the resources to timely process its existing workload.⁴³⁰ In fact, processing times for many of the agency's product lines has doubled in recent years.⁴³¹

Processing delays upend the lives of immigrants and their U.S. citizen families. Lengthy wait times can result in applicants losing their jobs, thus depriving their families—including families with U.S. citizen children—of income

⁴²⁹ Julia Isaacs, *The Costs of Benefit Delivery in the Food Stamp Program*, Brookings Institution, 2008, https://www.brookings.edu/wp-content/uploads/2016/06/03_food_stamp_isaacs.pdf.

⁴³⁰ USCIS, *Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter*, 2018, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY18Q2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly%20All%20Forms%20FY18Q2.pdf); and DHS, *Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security*, 2018, <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf>.

⁴³¹ USCIS, *Historical National Average Processing Time for All USCIS Offices*, 2018, <https://egov.uscis.gov/processing-times/historic-pt>.

essential to necessities like food and housing.⁴³² Adjudication delays also lead to expiration of driver's licenses, which immigrants may rely upon to access banking, medical treatment, and other indispensable services, as well as for transportation to school and work. Delays also prolong the separation of families dependent on case approval for their reunion.

Despite the Department's admission of USCIS's inability to accommodate its current inventory, the proposed rule would substantially increase the agency's workload. This would, in turn, deepen USCIS case processing delays and compound the resulting harm to the public through heightened job loss, food shortages, and family separation. In short, the proposed rule will make an operational crisis appreciably worse, and immigrant families throughout the country will suffer the consequences.

In conclusion, we urge DHS to withdraw the proposed regulation in its entirety. As anti-poverty experts, we believe that the proposed changes will have profound and damaging consequences for the well-being and long-term success of immigrants and their families. We encourage the Department to dedicate its efforts to advancing policies that truly support economic security, self-sufficiency, and a stronger future for the United States by promoting – rather than undermining – the ability of immigrants, their families and children, and their communities to thrive.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in cursive script that reads "Olivia A. Golden". The signature is written in black ink on a light-colored background.

Olivia Golden, Executive Director
Center for Law and Social Policy

⁴³² American Immigration Lawyers Association (AILA), *Deconstructing the Invisible Wall*, 2018, <http://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

APPENDIX I: CLASP'S CONTRIBUTORS TO OUR PUBLIC COMMENTS

Listed Alphabetically

Wendy Cervantes is a senior policy analyst at CLASP, where she works across the organization's policy teams to develop and advocate for policies that support low-income immigrants and their families. As a member of the child care and early education team, she also focuses on improving access to these programs for children of immigrants and children of color. Ms. Cervantes is an expert on the cross-sector policy issues that impact children of immigrants, including family economics, child welfare, immigration, education, healthcare, and human rights. Prior to joining CLASP, Ms. Cervantes was vice president of immigration and child rights at First Focus, where she led the organization's federal policy work on immigration and established the Center for the Children of Immigrants. She also served as director of programs at La Plaza, a Latino community-based organization in central Indiana, where she oversaw the implementation and evaluation of education, health, and social service programs. Earlier in her career, Ms. Cervantes worked at the Annie E. Casey Foundation where she managed the national immigrant and refugee families and the District of Columbia portfolios. She also has experience as a community organizer and an adult ESL instructor. Ms. Cervantes currently serves on the advisory board of the Center on Immigration and Child Welfare and the Board of Welcome.US. She previously served on the steering committee of the U.S. Campaign for Ratification of the UN Convention on the Rights of the Child. In 2011, she was selected as an ALL IN fellow with the National Hispana Leadership Institute. The proud daughter of Mexican immigrants, Ms. Cervantes holds an M.A. in Latin American studies and political science from the University of New Mexico and a bachelor's in communications from the University of Southern California.

Rosa M. García is a senior policy analyst with CLASP's Center for Postsecondary and Economic Success, where she works to expand access to postsecondary opportunities and career pathways for low-income students, low-skilled adults, students of color, and immigrants. Rosa also works across CLASP's policy teams to help advance CLASP's racial equity agenda. Prior to joining CLASP, Rosa worked to promote access, affordability, equity and diversity, and student success in higher education through her roles as a public servant and advocate at the federal, state, and local level. Her previous positions include Deputy Chief of Staff/Legislative Director to a senior member of the Congressional Hispanic Caucus, Executive Director of Legislative Affairs at the Hispanic Association of Colleges and Universities (HACU), Special Assistant/Legislative Aide to a County Councilmember in Montgomery County, Maryland and a gubernatorial appointment to the Maryland State Board of Education. Rosa has also worked at the Mexican American Legal Defense and Educational Fund (MALDEF), the U.S. Census Bureau, and the Morris K. Udall Foundation. Early in her career, Rosa served as an Assistant Dean of Admission at Wesleyan University and Swarthmore College, where she worked to increase the representation of students of color on campus. As an educator, Rosa has provided academic counseling, coaching and mentoring to low-income students, immigrants, and students of diverse backgrounds and taught underserved youth and adult learners in various educational settings.

Olivia Golden is CLASP's executive director. An expert in child and family programs at the federal, state, and local levels, she has a track record of delivering results for low-income children and families in the nonprofit sector and at all levels of government. During the eight years she served as Commissioner for Children, Youth, and Families and then as Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services (1993-2001), Ms. Golden was a key player in expanding and improving Head Start and creating Early Head Start, implementing landmark welfare reform, tripling the level of funding for child care, and doubling adoptions from foster care. As an Institute fellow at the Urban Institute from 2008 to 2013, Ms. Golden spoke, wrote, and led major initiatives on poverty and the safety net, families' economic security and children's well-being. She brings to CLASP the leadership role in a major multi-state initiative, Work Support Strategies, which provides six states with the opportunity to design, test, and implement reforms to improve low-income working families' access to health reform, nutrition assistance, and child care subsidies.

Under her leadership from 2001 to 2004, the D.C. Children and Family Services Agency emerged from federal court receivership and markedly improved the lives of children in the District. Her book *Reforming Child Welfare* [2009] melds this experience with original research to recommend policy, practice, and leadership strategies to improve outcomes for very vulnerable children and their families. During 2007, she oversaw the management of all state government agencies as New York's director of state operations. She was also director of programs and policy at the Children's Defense Fund (1991-1993), a lecturer in public policy at Harvard University's Kennedy School of Government at (1987-1991), and budget director of Massachusetts's Executive Office of Human Services (1983-1985). Her book, *Poor Children and Welfare Reform* [1992], draws lessons from welfare programs around the country that tried to make a difference to families by serving two generations, both parent and child. Ms. Golden holds a doctorate and a master's degree in public policy from the Kennedy School of Government at Harvard, where she earned a B.A. in philosophy and government.

Tanya L. Goldman is a senior policy analyst/attorney with CLASP's job quality team. Ms. Goldman focuses on policy solutions that improve job quality for workers, strengthen worker protections, and increase economic security for low-income working families. She brings expertise in the strategic enforcement of workplace labor standards. Prior to joining CLASP, Ms. Goldman had several positions in the federal government focused on protecting and upholding labor and employment laws. She worked at the U.S. Department of Labor, first as the Deputy Chief of Staff and Senior Policy Advisor to the Administrator of the Wage and Hour Division, focusing on strategic enforcement and protection of workers' labor standards. She also served as an Administrative Appeals Judge, issuing decisions in cases arising under a wide range of worker protection laws. Before working at the U.S. Department of Labor, Ms. Goldman prosecuted violations of federal employment laws at the U.S. Equal Employment Opportunity Commission. Early in her career, Ms. Goldman clerked for a federal judge and taught at Tulane University Law School. An adjunct professor at the Georgetown University Law Center, Ms. Goldman holds an undergraduate degree from Stanford University and a law degree from Harvard Law School.

Madison Hardee is a senior policy analyst/attorney at CLASP, where she focuses on issues affecting access to health care and public benefits for immigrants and mixed-status families. Ms. Hardee co-leads the Protecting Immigrant Families, Advancing Our Future Campaign in collaboration with the National Immigration Law Center. Prior to joining CLASP, Ms. Hardee spent five years as an attorney with Charlotte Center for Legal Advocacy, where she provided direct legal representation to low-income clients across public benefit programs and saw first-hand how programs like Medicaid, SNAP and SSI reduce economic hardship, improve health, and increase stability. She successfully challenged state agency decisions and identified several areas for systemic advocacy. Working together with partner organizations, Ms. Hardee negotiated significant changes to Medicaid and ACA eligibility policies, providing access to health care for tens of thousands of low-income immigrants. Ms. Hardee holds a Juris Doctor from Tulane Law School and a bachelor's degree in public health from George Washington University. In 2016, she was presented with the New Leader in Advocacy Award by the National Legal Aid and Defender Association.

Elizabeth Lower-Basch is director of CLASP's income and work supports team. Her expertise is federal and state welfare (TANF) policy, other supports for low-income working families (such as refundable tax credits), systems integration, and job quality. From 1996 to 2006, Ms. Lower-Basch worked for the Office of the Assistant Secretary for Planning and Evaluation at the U.S. Department of Health and Human Services. In this position, she was a lead welfare policy analyst, supporting legislative and regulatory processes and managing research projects. She received a Master of Public Policy from Harvard University's Kennedy School of Government.

Hannah Matthews is Deputy Executive Director for Policy. In this role, she provides leadership, strategic guidance, and support for the organization's policy and advocacy agenda. She is an expert on federal and state child care and early education policies and cross-sector policies that affect young children, including children of immigrants. Previously, Ms. Matthews was CLASP's director of child care and early education. In that role,

she advocated for public policies that advanced healthy child development, parent wellbeing, and family economic stability. She was also a leader on improving access to quality child care and early education for children of immigrants and children of color. Ms. Matthews is a nationally recognized expert on the federal Child Care and Development Block Grant (CCDBG) and worked with advocates and policymakers nationally and in states to improve child care subsidy policies for low-income children and families. Her work helped to inform the 2014 reauthorization of CCDBG, its implementation in the states, and to secure the largest federal funding increase in CCDBG's history in 2018. Ms. Matthews also held policy analyst and senior policy analyst roles at CLASP and served as a senior advisor on child care policy in the U.S. Department of Health and Human Services in 2015. Prior to joining CLASP, she worked in research assistant positions at the National Assembly of Health and Human Service Organizations, the Levitan Center for Social Policy Studies, and Voices for America's Children. She also worked at Human Rights Watch. Ms. Matthews earned a bachelor's degree from The George Washington University, and a master's degree in public policy from Johns Hopkins University.

Renato Rocha is a policy analyst within CLASP's Income and Work Supports team. He focuses on issues regarding work requirements and other related provisions across programs as well as access to public benefits for immigrant families. Prior to CLASP, Renato was an economic policy analyst at UnidosUS (formerly National Council of La Raza), where he conducted analysis of consumer protection, budget, tax, disaster relief, and labor issues that impact the wellbeing of Latino and immigrant communities. Earlier in his career, Renato engaged in efforts to promote comprehensive immigration reform and advocate for enforcement of farmworker labor-protection laws at Farmworker Justice. In graduate school, he also had the opportunity to work at the National Immigration Law Center, where he analyzed policy issues affecting deferred action recipients. Renato holds a Master in Public Affairs from Princeton University's Woodrow Wilson School of Public and International Affairs and a B.A. in Politics from Occidental College. In 2013, Renato served as a Fulbright Public Policy Initiative Fellow to Mexico.

Shiva Sethi is a research assistant for the child care and early education team at CLASP. He provides research support and analysis on various early education issues. Before joining CLASP, Mr. Sethi interned in the U.S. Department of State's Office of Civil Rights and at the Santa Fe Institute. He also served as a resident advisor, teaching assistant, and orientation leader during his undergraduate career. He recently graduated from the University of North Carolina at Chapel Hill with a B.A. in economics and global studies.

Darrel Thompson is a research assistant with CLASP's Income and Work Supports team. He provides research support and analysis on various low-income and work support programs. Prior to joining CLASP, Darrel interned at the Center on Budget and Policy Priorities and the Lou Frey Institute of Politics and Government. He holds a bachelor's degree in political science from the University of Central Florida.

Rebecca Ullrich is a policy analyst with CLASP's child care and early education team. She uses qualitative and quantitative analysis to advocate for state and federal policies that support young children and their families. Prior to CLASP, Ms. Ullrich was a policy analyst with the Center for American Progress' early childhood team. In that capacity, she focused on the early childhood workforce, early intervention, and measures of quality in early childhood programs. Ms. Ullrich holds a master's degree in applied developmental psychology from George Mason University as well as a bachelor's degree in human development from Virginia Tech.