

December 7, 2018

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: Public Charge Notice of Proposed Rulemaking, Docket No. USCIS-2010-0012

Dear Ms. Deshommes:

This comment is submitted by Christina Gill, attorney at Greater Hartford Legal Aid (GHLA), in opposition to the Department of Homeland Security's (DHS) proposed changes to the "public charge" rule, Notice of Proposed Rulemaking Docket No. USCIS-2010-0012.

GHLA is a not-for-profit law firm that provides free legal services to low income residents in the Hartford, Connecticut area, including immigrant survivors of domestic and sexual violence, those affected by human trafficking, and children who have suffered abuse, abandonment or neglect. Our work includes direct representation of immigrants pursuing immigration relief, as well as representing immigrants in civil matters related to public benefits, housing, education, employment and family violence. Through our work, we have first-hand knowledge of how access to public benefits safeguards the health, nutrition, housing, and economic security of immigrant families and our community. GHLA strongly believes that people who are eligible for public benefit programs should not be deterred from enrolling or suffer adverse immigration consequences for using benefits they are eligible to receive.

Introduction

The proposed rule unnecessarily expands and redefines "public charge," and creates greater uncertainty about the consequences of receiving public benefits. Current guidance focuses on whether an intended immigrant is likely to become *primarily dependent* on benefits for subsistence; however, the proposed rule extends public charge to include anyone who is likely to use more than a minimal amount of a drastically expanded list of critical programs. While the potential benefits of the proposed public charge rule are likely overstated, the downside risks are great. The proposed rule will discourage eligible families from receiving Medicaid, Supplemental Nutritional Assistance Program (SNAP), subsidized housing, and other essential public benefits. Immigrant families who fear that a parent's green card application could be adversely affected may dis-enroll their eligible U.S. citizen children from critical public benefits such as Medicaid and SNAP. Although the proposed rule does not directly

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penalize a green card applicant whose family member receives public benefits, DHS admits that the proposed rule will have a “chilling effect” on immigrant families.¹ In our office, many immigrant clients have asked whether they should dis-enroll their eligible U.S. citizen children from Medicaid and SNAP in order to avoid damaging their opportunity to remain in the U.S. with their children. Our community partners have confirmed that immigrants have disenrolled from public benefits that are not even covered by the proposed rule, such as Women, Infants, and Children (WIC), under the mistaken belief that receiving these benefits will hurt their chances of remaining in the U.S. with their children.

If immigrant parents forego Medicaid and SNAP (food stamps) for their eligible children, there will be negative consequences for children’s health and nutrition. This will result not only in human suffering, but also in lost productivity and increased societal costs borne by us all. Families should not be forced to choose between taking care of their families and becoming a U.S. resident. Therefore, we urge DHS to immediately withdraw this proposed rule which will put millions of children and families at risk, and to instead craft policies that allow immigrant children and families to be healthy and safe.

The “Chilling Effect” on Medicaid Enrollment Will Harm Our Communities

The proposed rule will deter immigrant families from enrolling in Medicaid which will have negative consequences for our entire community. The Kaiser Family Foundation (KFF) estimates that, based on a Medicaid disenrollment rate of 15% to 35%, between 2.1 million and 4.9 million people who receive Medicaid/CHIP in a family with a noncitizen would dis-enroll from the program.² The estimated disenrollment rate is based both on disenrollment by individuals who would be affected by the public charge rule, and also those who dis-enroll based on “fear and confusion.”³

As the KFF issue brief points out, DHS itself recognizes some of the potential negative effects of this projected Medicaid disenrollment, including:

- Revenue losses suffered by medical providers who provide uncompensated care.
- Revenue losses to pharmacies due to medication noncompliance.
- Increased emergency room usage.
- Outbreaks of communicable diseases.
- Reduced productivity and worse educational outcomes.
- Worse health outcomes, especially for pregnant women, infants, and children.⁴

¹ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51266 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, 248), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>.

² SAMANTHA ARTIGA ET AL., HENRY J KAISER FAMILY FOUNDATION, ESTIMATED IMPACTS OF THE PROPOSED PUBLIC CHARGE RULE ON IMMIGRANTS AND MEDICAID 5–6 (2018), <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>.

³ *Id.* at 1.

⁴ *Id.* at 7.

U.S. Citizen Children Will Suffer as a Result of Unnecessary Disenrollment from Medicaid

Medicaid helps children stay healthy and reach their full potential. Children who are covered by Medicaid have fewer health problems and emergency room visits as adults.⁵ Children also benefit when their parents have access to health care and better health outcomes.⁶ Studies show that children are more likely to receive preventive health care if their parents are covered by Medicaid.⁷ For example, children are 29% more likely to have an annual well-child visit if their parents are enrolled in Medicaid.⁸ The relationship is strongest for families with household incomes between 100% and 200% of the Federal Poverty Level. In these families, children are 45% more likely to receive a well-child visit if their parents are enrolled in Medicaid.⁹ Research also shows that adults in households in which all children have health insurance of any type are less likely to delay seeking medical care.¹⁰

Children who receive Medicaid are more likely to graduate high school and college, have higher wages and be more productive taxpayers as adults.¹¹ One study of recipients of the Medicaid/CHIP expansion in the 1980s and 1990s concludes that childhood recipients of Medicaid will pay more in taxes as adults, projecting that the “government will recoup 56 cents of each dollar spent on childhood Medicaid by the time [childhood recipients] reach age 60.”¹²

Dis-enrolling from Medicaid could threaten families’ financial stability. A survey by the CDC found that the expansion of Medicaid reduced unpaid medical bills.¹³ Families burdened by uncovered medical bills could suffer greater housing and nutrition insecurity for children. The American Academy of Pediatrics warns that poverty can produce “toxic stress” affecting children’s “self-regulation and executive function” in the long-term.¹⁴ Poor adult health connected with adverse childhood experiences, such as toxic stress “costs the U.S. nearly \$100

⁵ Laura R. Wherry et al., *Childhood Medicaid Coverage and Later Life Health Care Utilization* 1 (Nat’l Bureau of Econ. Research, Working Paper 20929, 2015), <https://www.nber.org/papers/w20929.pdf>.

⁶ CTR. ON BUDGET & POLICY PRIORITIES, HARM TO CHILDREN FROM TAKING AWAY MEDICAID FROM PEOPLE FOR NOT MEETING WORK REQUIREMENTS (2018), <https://www.cbpp.org/sites/default/files/atoms/files/4-4-18health.pdf>.

⁷ Maya Venkataramani et al., *Spillover Effects of Adult Medicaid Expansions on Children’s Use of Preventive Services*, PEDIATRICS, Dec. 2017, at 1, <http://pediatrics.aappublications.org/content/pediatrics/140/6/e20170953.full.pdf>.

⁸ *Id.* at 4.

⁹ *Id.* at 4.

¹⁰ PHATTA KIRDRUANG & PINAR KARACA-MANDIC, MINN. POPULATION CTR, UNIV. OF MINN, SPILLOVER EFFECTS OF CHILDREN’S PUBLIC HEALTH INSURANCE ON ADULT FAMILY MEMBERS’ HEALTH-SEEKING BEHAVIOR, https://pop.umn.edu/sites/pop.umn.edu/files/spill_over_effects.pdf.

¹¹ CTR. ON BUDGET & POLICY PRIORITIES, *supra* note 6.

¹² David W. Brown et al., *Medicaid As An Investment in Children: What Is the Long-Term Impact on Tax Receipts?*, (Nat’l Bureau of Econ. Research, Working Paper 20835, 2015), <https://www.nber.org/papers/w20835.pdf>.

¹³ U.S. DEP’T OF HEALTH & HUMAN SERVS, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR HEALTH STATISTICS, NAT’L HEALTH INTERVIEW SURVEY EARLY RELEASE PROGRAM (2015), https://www.cdc.gov/nchs/data/nhis/earlyrelease/bills_unable_to_pay_at_all_2011_2015.pdf.

¹⁴ AAP Council on Community Pediatrics, *Poverty & Child Health in the U.S.*, PEDIATRICS, Mar. 2016, at 1–2, <http://pediatrics.aappublications.org/content/pediatrics/137/4/e20160339.full.pdf>.

billion annually in expenses for cardiovascular care and more than \$85 billion in mental health disorders.”¹⁵

The proposed rule has already caused immigrant families to consider dis-enrolling their U.S. citizen children from Medicaid, out of fear they will be unable to obtain a green card and remain in the U.S. with their children. Discouraging immigrants from enrolling their eligible U.S. citizen children in Medicaid, means children’s health will suffer in both the short and long-term. We need all children in the U.S. to reach their potential, including those with immigrant parents; therefore, we urge DHS to withdraw the proposed rule and to not consider the use of Medicaid in the public charge determination.

The “Chilling Effect” on Receipt of SNAP (Food Stamps) Will Harm Our Communities

SNAP is an effective work support that increases productivity, supports health, helps lift families out of poverty, and stimulates the economy. If adopted, the proposed rule will likely spur immigrants who are legally authorized to participate in SNAP to forgo assistance or dis-enroll, jeopardizing their food security, health, well-being, and economic security. Discouraging eligible immigrant families from accessing SNAP won’t just hurt immigrants—it will drive entire communities deeper into poverty and hunger and roll back years of progress in addressing hunger and poverty nationwide.

Decades of research have shown how proper nutrition in the early years is critical to healthy development and lifelong outcomes.¹⁶ Children who live in food insecure households are more likely to experience educational, health, and behavioral problems as a result.¹⁷ Household food insecurity is also strongly associated with increased health care utilization and higher health care costs.¹⁸ Eligible children are likely to be disenrolled from SNAP due to the fear and uncertainty caused by the proposed rule, meaning children will go hungry and suffer costly long-term health consequences.

SNAP is an Effective Work Support

Use of non-monetary benefits does not indicate future reliance on the government; in fact, the opposite is true. SNAP recipients who can work, *do* work: 58% of SNAP households with at least one working-age, non-disabled adult work while receiving SNAP, and 82% worked the year before or after receiving SNAP benefits.¹⁹ These rates are even higher for families with

¹⁵ GEORGETOWN UNIV. HEALTH POLICY INST., CTR. FOR CHILDREN AND FAMILIES, HEALTHY PARENTS AND CAREGIVERS ARE ESSENTIAL TO CHILDREN’S HEALTHY DEVELOPMENT (2016), <https://ccf.georgetown.edu/wp-content/uploads/2016/12/Parents-and-Caregivers-12-12.pdf>.

¹⁶ MEREDITH HICKSON ET AL., CHILDREN’S HEALTHWATCH, TOO HUNGRY TO LEARN: FOOD INSECURITY AND SCHOOL READINESS (2013), http://childrenshealthwatch.org/wp-content/uploads/toohungrytolearn_report.pdf.

¹⁷ FOOD RESEARCH & ACTION CTR., THE ROLE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM IN IMPROVING HEALTH AND WELL-BEING 3 (2017), <http://www.frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>.

¹⁸ *Id.* at 4.

¹⁹ CTR. ON BUDGET & POLICY PRIORITIES, CHART BOOK: SNAP HELPS STRUGGLING FAMILIES PUT FOOD ON THE TABLE 23 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/3-13-12fa-chartbook.pdf>.

children: more than 60% work while receiving SNAP, and almost 90% work in the prior or subsequent year.²⁰

The high labor force participation among SNAP recipients is no coincidence. SNAP is designed to act both as a safety net for people who are elderly, disabled, or temporarily unemployed, as well as to supplement the wages of low-income workers. SNAP's role in supplementing low wages is particularly important, especially given the stagnant wages in America and shortage of jobs for workers with limited education and particularized skillsets.²¹

Data also indicates that SNAP does not create work disincentives; SNAP eligibility rules have proven to encourage and reward work among low-income households. The benefit formula used by SNAP includes work incentives to ensure that households are financially better off if they get a job or raise their earnings, mitigating any dependency effects that could arise. For example, when a SNAP recipient sees an increase in earnings, the benefits only decline modestly and gradually (decreasing by 24 to 36 cents for each additional dollar earned).²² The result of the SNAP benefit calculation rules is that households receiving SNAP are in a better financial position if they are able to secure employment or increase their earnings, without a total and immediate loss of support. This gradual formula instead steadily prepares recipients for financial and food security—half of all new SNAP participants will leave the program within ten months.²³

SNAP Supports Workers' Health, Which Supports Productive Workers

The effect of SNAP on one's overall health and well-being cannot be delinked from work support—when our nation's health is hurting, so is our work force. Employees whose nutrition needs are being met prove to be healthier, and may take fewer sick days and work more productively. Benefit programs like SNAP, which are intended to alleviate instances of financial stress such as during job loss, can protect the health of the unemployed, and consequently our workforce. But the proposed rule would undercut the health of working immigrants in multiple ways. DHS discusses the chilling effects this proposed rule will almost certainly have: "There are a number of consequences that could occur . . . Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence . . . and increased rates of poverty."²⁴

SNAP frees up funds that can be used to help individuals and families get back on their feet during periods of financial difficulty. The loss of SNAP further exacerbates food insecurity, and

²⁰ *Id.*

²¹ See generally BRYNNE KEITH-JENNINGS & VINCENT PALACIOS, CTR. ON BUDGET & POLICY PRIORITIES, SNAP HELPS MILLIONS OF LOW-WAGES WORKERS (2017) <https://www.cbpp.org/sites/default/files/atoms/files/5-10-17fa.pdf> (explaining why SNAP is a crucial financial support for low-wage workers).

²² ELIZABETH WOLKOMIR & LEXIN CAI, CTR. ON BUDGET & POLICY PRIORITIES, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM INCLUDES EARNING INCENTIVES 3 (2018) <https://www.cbpp.org/sites/default/files/atoms/files/7-25-17fa.pdf>.

²³ U.S. DEPT. OF AGRICULTURE, BUILDING A HEALTHY AMERICA: A PROFILE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 11 (2012) <https://fns-prod.azureedge.net/sites/default/files/BuildingHealthyAmerica.pdf>.

²⁴ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51270 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, 248), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>.

families experiencing food insecurity may need to use coping strategies to stretch insufficient budgets. This may include forgoing medicine, or even diluting or rationing infant formula due to cost considerations. These coping strategies aggravate existing disease and compromise health.

SNAP Lifts Participants Out Of Poverty

Furthermore, the effects SNAP has had on lifting participants out of poverty is indisputable. SNAP is a crucial source of support for nutrition, and consequently health, learning, and economic security. According to the U.S. Census Bureau, SNAP moved 3.4 million people out of poverty last year alone, including 1.5 million children.²⁵ By receiving SNAP, family resources and working wages are freed up for other necessities, such as housing and medical expenses. But SNAP's effect of lifting millions out of poverty would likely be reduced with the proposed rule. Although the proposed rule does not apply to all immigrants, the proposal would make—and has already made—families afraid to access programs like SNAP that support basic needs.

SNAP Stimulates the Economy

DHS notes how the proposed rule “could have downstream and upstream impacts on state and local economies, large and small businesses, and individuals” including “retailers participating in SNAP, [and] agricultural producers who grow foods that are eligible for purchase using SNAP benefits.”²⁶ Increasing access to SNAP generally stimulates the economy, benefitting both the consumer and the business. Because most households redeem their monthly SNAP benefits quickly and because the program helps struggling households purchase adequate food, SNAP is one of the most effective forms of economic stimulus during a downturn. One study found that “in 2009, the peak year of the last recession, \$50 billion in SNAP benefits were spent in local stores, generating about \$85 billion in local economic activity, even as the overall economy was struggling.”²⁷ The U.S. Department of Agriculture estimates that every \$5 in new SNAP benefits generates \$9 in economic activity,²⁸ and SNAP accounts for about 10% of the food that U.S. families buy.²⁹

Decreasing access to SNAP and scaring away qualified participants will negatively affect not only those who are eligible, but also the stores supporting SNAP services. SNAP participants purchase groceries from approximately 260,000 retailers across the country, including

²⁵ Liana Fox & Laryssa Mykta, *Supplemental Poverty Measure Shows Who Benefits From Government Programs*, U.S. CENSUS BUREAU (Sept. 12, 2018), <https://www.census.gov/library/stories/2018/09/supplemental-nutrition-assistance-program-lifts-millions-out-of-poverty.html>.

²⁶ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51268–51269 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, 248), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>.

²⁷ ELIZABETH WOLKOMIR, CTR. ON BUDGET & POLICY PRIORITIES, SNAP BOOSTS RETAILERS AND LOCAL ECONOMIES 3 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/8-29-17fa.pdf>.

²⁸ FOOD RESEARCH & ACTION CTR., THE HUNGER IMPACT OF THE PROPOSED PUBLIC CHARGE RULE 5 (2018), <http://frac.org/wp-content/uploads/hunger-impact-proposed-public-charge-rule.pdf>.

²⁹ WOLKOMIR, *supra* note 27, at 1.

superstores and farmers' markets,³⁰ but SNAP provides important support for small businesses in particular, as 80% of SNAP authorized retailers are smaller stores.³¹ For these businesses, SNAP is an important revenue source, particularly in high-poverty areas, where SNAP purchases can account for a significant share of retailer's total shares.

Conclusion

In order for our communities to thrive, everyone in our communities must be able to get the care, services and support they need to remain healthy and productive. The "chilling effect" of this rule jeopardizes the health of immigrants and U.S. citizen children. The proposed rule will cause immigrant parents to forgo vital services such as Medicaid and SNAP, for fear that using these benefits will jeopardize their ability to get a visa or green card. Widespread confusion about which benefits are and are not included in a public charge determination will also lead families to avoid enrolling in programs that are not part of this proposed rule. The impact of the proposed rule is enormous and presents immigrant families with an impossible choice: keep yourself or your children healthy but risk being separated, or forgo vital services like preventive care and food assistance so your family can remain together. Investing in nutrition, health care, and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities. GHLA strongly urges DHS to rescind this rule and to not consider the use of public benefits programs like SNAP and Medicaid in public charge determinations.

Respectfully submitted,

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³⁰ WOLKOMIR, *supra* note 27, at 1.

³¹ WOLKOMIR, *supra* note 27, at 2.

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**Comments re Inadmissibility on Public Charge Notice of Proposed Rulemaking,
Docket No. USCIS-2010-0012**

To Whom it May Concern:

This comment is submitted by Lucy Potter, Staff Attorney at Greater Hartford Legal Aid (GHLA), in opposition to the proposed “public charge” rule change. The proposed rule is unnecessary and redundant in light of restrictions to immigrants’ ability to obtain federal benefits that already were passed in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The purported cost savings outlined in the notice of proposed rulemaking (NPRM) is inflated, based in part on an assumption that there will be a chilling effect that discourages individuals who are legally eligible to apply for benefits to do so. While the benefits of the rule are potentially over-stated, the downside risks are great, because the fear that it endangers will discourage families from seeking access to nutrition and medical services that help low-wage workers and their children.

Introduction

This notice of proposed rulemaking redefines “public charge” for purposes of determining whether to admit an immigrant seeking adjustment of status or admission by Visa as a Legal Permanent Resident (LPR). Under the new definition, a person is a “public charge” if he or she receives \$1821 combined total from any of the listed monetizable public benefit programs over the course of a year, or receives the specified non-monetizable benefits over the course of 12 months, or 9 months if in combination with monetizable benefits. The new definition includes food stamps and certain types of rental subsidies. Greater Hartford Legal Aid. Medicaid and Medicare

Savings Plan Subsidies and public housing would be considered “non-monetizable” programs. None of these benefits was previously considered in public charge determinations. Previously, only cash assistance and long-term institutional care were considered indications of public charge. Under the proposed rule, a person is deemed inadmissible if, weighing the factors (age, health, financial status, education and skills) he or she is more likely than not to become a “public charge” according to this definition, at any time in the future.

The rule responds to a problem that does not exist. According to a Cato Institute study, immigrants are less likely to receive public benefits than citizens with comparable income levels. When they do receive public benefits, they receive lower amounts.,Leighton Ku and Brian Bruen, “Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens,” (Cato Institute 2013). As demonstrated below, this proposal fuels the erroneous perception that immigrants use a disproportionate share of public benefits. That is a false narrative. The data the notice relies on demonstrates the fallacy. The proposed rule is not necessary and would engender a chilling effect producing needless harmful consequences for many struggling American families who are not even subject to public charge analysis.

After Restrictions Imposed by PRWORA, the Proposed Rule is Unnecessary.

Over two decades ago, in 1996, Congress enacted the PRWORA and greatly restricted public benefit eligibility for immigrants, requiring five-year residency as an LPR before a person can apply for cash benefits (SSI or TANF) as well as food stamps or Medicaid.¹ The rare exceptions, generally for humanitarian-based entrants, are also exceptions to consideration of public charge in admissibility determinations.

The effect of the PRWORA is that immigrants are not eligible for benefits that would render them even partially dependent on the government prior to achieving LPR status and, in most cases, until five years after that. Moreover, in applying for benefits, income from the sponsor who signed the mandatory sponsoring affidavit is considered available to the immigrant applicant. Thus, even an LPR with limited income may not qualify for SNAP or Medicaid assistance because the sponsor’s income is deemed to him or her. 8 U.S.C. 1631. Finally, the sponsor’s affidavit is a legally binding assurance that the sponsor will support the person at the poverty level. These 1996 changes greatly reduced the possibility that an immigrant can receive any public benefits.

The NPRM also cites the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) as support for the proposed public charge rule. In fact,

¹ States can choose to make exceptions to the five-year wait for Medicaid if someone is pregnant or under 18.

the IIRIRA initially included a public charge definition, but ultimately rejected it. An earlier version of the bill would have allowed deportation for any legal permanent resident who received 12 months of public assistance during the seven years after qualifying for LPR status. Conference Report on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act, House Report 104-828, September 24, 1996, Sec. 532. Congress deleted this provision from the IIRIRA as enacted. Joyce Vialet, "Immigration: INS's Proposed Public Charge Rule," CRS Report for Congress RS20265, July 16, 1999, 6.

The history of these two 1996 Acts suggest that Congress decided that a stricter public charge analysis was not necessary in light of PRWORA's restrictions on immigrants receiving public benefits.

The restrictions Congress enacted in PRWORA render the current proposed rule redundant. The factors to be considered in the public charge determination: age, income, health, education and family size, can be readily ascertained. However, even a sick, aged, low-income person with many children could not be considered likely to become a "public charge" unless he or she is also likely to get public assistance. Under current federal law that is virtually impossible until the person has been an LPR for five years.

A public charge rule was proposed in 1999, following the 1996 PRWORA changes. Inadmissibility and Deportability on Public Charge Grounds, 64 Federal Register 28676, May 26, 1999. While the rule was never finalized, an interim guidance issued that has defined public charge since then. Field guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Federal Register 28689, March 26, 1999. The preamble to the 1999 proposed public charge rule specifically noted that the five year bar before for legal permanent residents, as well as the requirement of sponsor affidavits and of deeming of sponsor income already greatly limited immigrant eligibility for public benefits. 64 F.R. 28680. The preamble noted that these changes "reduc[e] the possibility that aliens will be found likely to become public charges." *Id.*

Definition of Public Charge

"Public charge" is not defined in the statute that is the basis for this rule.² This NPRM and the 1999 NPRM both look to the same dictionary definition. "Public charge" is "a person or thing committed to another's care" NPRM 151158; Inadmissibility and Deportability on Public Charge Grounds, 64 FR 28676, 77.

² 8 U.S.C. 1182(a)(4)

The current NPRM concludes that this means someone receives a “substantial component” of their support from benefits, which could include Medicaid or SNAP benefits of as little as \$1821 per year. The 1999 rule drafters concluded that this same definition “suggests a complete, or nearly complete, dependence on the Government rather than the mere receipt of some lesser level of financial support.” Inadmissibility and Deportability on Public Charge Grounds, 64 FR 28676, 77.

While public charge may be subject to some interpretation, there is one constant under any interpretation: The words “public charge” refer to a person incurring a cost to the government. The proposed definition expands the types of government expenditures, and reduces the amount of cost to the government that would constitute a person being a public charge. However, the definition of “public charge” cannot include people who impose zero cost on the public fisc. In effect, that is what this rule proposes. Because current law already precludes LPRs from receiving Medicaid or SNAP for five years, an LPR cannot, by law, be primarily dependent on public benefits until five years after receiving his or her green card. The NPRM essentially concedes that point in its analysis of how this proposed rule would achieve cost savings. See discussion below.

The proposed rule also extends the definition of “public charge” to non-cash programs. The NPRM notes that the proposed rule “improves on” the 1999 Public Charge Field Guidance by “removing the artificial distinction between cash and non-cash benefits.” 51123. The preamble does not explain why the distinction between cash programs and the non-cash SNAP and Medicaid programs, which has always been recognized in the public charge analysis, is “artificial.” Past public charge policies have been limited to cash assistance programs, even in the decisions relied on by this notice of rulemaking. (*Matter of Harutunian*, 14 I & N Dec. 583 (Reg’l Comm’r 1974 (old age cash assistance) ; *Matter of A-* 19 I & N Dec. 867 (Comm’r 1988) (family cash assistance.) In the wake of the 1996 welfare reform, cash assistance programs are time limited and require work. *SNAP and Medicaid remain in place to support work*. Far from an “artificial distinction” from the implied dependency of cash benefits, SNAP and Medicaid are benefits that working people rely on to supplement their earnings. Moreover, As the Secretary of Health and Human Services noted in 1999, it is extremely unlikely that an individual or family could subsist on a combination of non-cash benefits, such as food stamps and Medicaid, without additional income to meet their subsistence needs. Inadmissibility and Deportability on Public Charge Grounds, 64 FR 28676.

SNAP and Medicaid are Work Supports for Low-Wage Workers.

Since the 1996 welfare reform, working families in the United States have increasingly come to rely on SNAP and Medicaid, and such households now comprise

the majority of households receiving these benefits. While some receive SNAP due to a loss of employment, 82% of households that receive SNAP benefits, and 87% of such households with children, worked during the year they received the benefits. Policy Basics: The Supplemental Nutrition Assistance Program (SNAP), Center for Budget and Policy Priorities, February 13, 2018. The stagnation of wages for low-income workers has made these two programs indispensable work support for the lowest wage workers. In fact, this wage stagnation increased significantly after the 1996 changes to welfare laws. In the eighteen years since 2000, weekly wages have risen 4.3% among workers in the lowest quarter of income distribution. But for those in the top tenth of the distribution, wages have risen a cumulative 15.7%, to \$2,112 a week – nearly five times the earnings of the bottom tenth (\$426). Silver, Drew, “For most U.S. workers, real wages have barely budged in decades”, Pew Research, August 7, 2018.

As the NPRM notes, there are 64,281,954 (20% of the U.S. population) Medicaid recipients and 45,294,831 SNAP recipients (14% of U.S. population.) NPRM, 51262. Reliance on these programs is widespread among the lowest wage workers in the U.S., because the present wage structure simply does not afford adequate income for basic needs. Moreover, as the Center for Immigration Studies notes, 95% of immigrant households with children had at least one worker. Camarota, Steven A., Welfare Use by Immigrant Households with Children: A Look at Cash, Medicaid, Housing, and Food Programs, Center for Immigration Studies, April 5, 2011. Medicaid and SNAP buttress work. Without such supports, many of these workers, both citizens and LPRs, would lose their ability to continue working, for lack of health treatment or inadequate nutrition.

The rule’s purported savings is based on the chilling effect to people who are legally eligible to receive benefits.

The NPRM estimates a \$1.5 billion savings from a reduction in transfer payments by those who stop receiving or do not apply for Medicaid, SNAP, TANF, SSI, Medicare Savings Programs and housing subsidies, as a result of the change in the public charge rule. NPRM at 51268. It multiplies this amount by 1.5 to account for additional savings to states, estimated at 50% of the federal savings. 51273, Table 56, note 1.

Under the proposed rule, consideration of receipt of public benefits is expressly limited to benefits received by the specific immigrant who is applying for LPR status, and then only to benefits that person receives after the effective date of the rule. 8 C.F.R. §212.22(b)(4)(F). While the public charge rule applies to specific aliens, rather than to their households, the cost savings is estimated based on *households* that

include a non-citizen member. Moreover, the non-citizen member of the household is not necessarily even subject to the public charge analysis³

In other words, the NPRM bases savings estimates not just on the incentives for immigrants whose admission could actually be affected by receipt of benefits, but on the “chilling effect” for others, even including “U.S. citizens who are members of mixed-status households. The savings would be realized by these eligible household members forgoing enrollment in public benefit programs for fear it could negatively affect the admission of another household member. NPRM at 51260. The NPRM discusses the chilling effect that the 1996 PRA had on enrollment in benefits programs. “[T]here is evidence of a ‘chilling effect’ that *discourages immigrants from using public benefits programs for which they are still eligible.*” *Id.* 51266 (emphasis added). The drop-off in public benefits enrollment declined for non-citizens between 1994 and 1997, and was an overall 21% among household headed by foreign-born people. *Id.* Studies showed that SNAP enrollment among legal immigrants fell 54%. *Id.*

As discussed earlier, the 1999 public charge guidance recognized this chilling effect and was promulgated specifically to counteract it. The purpose of the 1999 guidance was to define ‘public charge’ “in order to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.”

By contrast, this Notice of Public Rulemaking aims to capitalize on the confusion that the proposed rule will generate. The cost savings estimate is expressly predicated on “the chilling effect” that is likely to cause legal immigrants and even U.S. citizens to disenroll from programs for which they are eligible, out of fear that receipt of the benefits could negatively impact another household member.

The NPRM ‘s methodology for estimating the cost savings makes this clear. It starts with the average annual number of total recipients (including citizens and non-citizens) for each program and divides that figure by 2.64, the average household size, to determine the total number of benefit recipient households. From this, it estimates the number of non-citizen program recipient household by multiplying the total households by 6.97%, the percentage of United States population that is foreign-born non-citizen. It then multiplies this figure by 3.35, the average household size for foreign-born non-citizens. The analysis claims that the resulting figure is the number

³ Earlier in the NPRM, there is a discussion of SIPP census data that specifies non-citizen receipt of public benefits. But the SIPP does not indicate current immigration status, and does not specify qualified aliens etc. 51160, n. 288

of public benefits recipients who are members of households that include foreign-born non-citizens. Table 49 at 51262. Then, given that the total foreign-born non-citizen population is 22,214,947 and the number of people who adjust annually to LPR status is 544,246, DHS estimates that 2.5% (544,246/22,219,947) of the people that it determined are public benefit recipients living in households with non-citizens would disenroll or forgo enrollment annually, in order not to be subject to the rule.

This analysis does not even attempt to estimate the number of legal permanent residents who would be deterred from applying for or continuing to receive benefits. As outlined above, that number would be negligible; the requirement that a person be legally present for five years before qualifying for SNAP or Medicaid makes it very unlikely that a person would receive benefits before receiving a green card. Rather, the projected savings under this rule results from people who are qualified for public benefits, *and who by and large are not even subject to the public charge rule*, choosing to forgo eligibility.

These “savings” come at a cost. The NPRM recognizes these costs, but does not quantify them. “DHS was not able to estimate potential lost productivity, health effects, additional medical expenses due to delayed health care treatment, or increased disability insurance claims as a result of this proposed rule.” NPRM at 51236. The potential harm is detailed further in the NPRM:

There are a number of consequences that could occur because of follow-on effects of the reduction in transfer payments identified in the proposed rule. DHS is providing a listing of the primary non-monetized potential consequences of the proposed rule below. Disenrollment or forgoing enrollment in public benefits program by aliens otherwise eligible for these 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; and
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.

DHS notes that the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community based organizations, including small organizations, may provide charitable assistance, such as food or

housing assistance, for individuals who forego enrollment in public benefit programs. DHS requests comments on other possible consequences of the rule and appropriate methodologies for quantifying these non-monetized potential impacts.

NPRM at 51270.

Even without quantifying these costs, it is hard to understand how this harm can be justified. The very purpose of these federal programs enacted by Congress is to help ensure basic nutrition, health and housing so that people can meet their potential in school and work. It is not legitimate for a rule to deter eligible people from receiving support that Congress has authorized, assistance that improves productivity and stability. Again, the savings that are projected would result not from people who could be subject to the public charge rule, but from others in their household who qualify for these programs and are not subject to the public charge rule, choosing to forgo these benefits. Only by misunderstanding the rule would a person make such a choice. Yet the cost savings is predicated on that misunderstanding.

The proposed rule would discriminate against people with disabilities

The proposed federal rule makes a person's medical condition, including a condition that constitutes a disability, a negative factor, heavily weighted against the application in the public charge analysis. This is a troubling step backward in immigration policy, which could conflict with Section 504 of the Rehabilitation Act of 1973. This provision will also negatively affect people with disabilities by limiting SNAP and medical coverage for immigrant caregivers for people with disabilities.

Section 504 prohibits federal programs from discriminating based on disability. 29 U.S.C. § 794(a). The Department of Homeland Security was specifically brought under the ambit of Section 504 in 2002. Public law 107-296; 6 C.F.R. 15.30. The DHS regulation provides, "No qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from the participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department." Id.

Historically, U.S. immigration policy toward those with disabilities was unenlightened and cruel. The law permitted exclusion of "lunatics, idiots and persons unable to care for themselves without becoming a public charge." This was broadly construed to limit the admission of "foreigners" of all types based on stereotypically tinged assessments (e.g. lower than average intelligence of Canadians, mediocrity of the Irish.) The Immigration Laws from a Disability Perspective: Where we were, where we are, where we should be, 10 Geo. Immigr. L.J. 441, 446, n. 36 (1996). Tens of thousands of immigrants were excluded on disability grounds each decade between 1900 and 1930. Id., 451, n.82. In 1990, in the wake of the Americans with Disabilities Act the Immigration and Naturalization Act was amended to limit exclusions, based

on physical or mental health, to those that pose a threat to safety. 8 U.S.C §1182(a)(1)(A)(iii). Exclusion on the basis of disability in the latter half of the twentieth century dwindled to several hundred per decade. Id.

Section 504 protects people with a physical or mental impairment that substantially limits one or more major life activities from being denied a benefit or service solely by reason of the impairment. *Lovell v. Chandler*, 303 F.3d 1039, 1062 (9th Cir. 2002). U.S. agencies, including the Department of Homeland Security cannot deny qualified individuals with a disability a reasonable accommodation if one is needed for meaningful access to their services. *Alexander v. Choate*, 469 U.S. 287 (1985) Section 504 has been construed to require counsel for mentally impaired plaintiffs in a deportation proceeding. *Franco-Gonzales v. Holder*, 767 F. Supp.2d 1034, 1051 (2010).

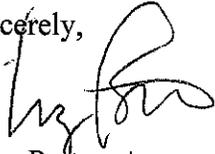
In assessing whether a person's impairment makes it more or less likely he or she would become a public charge, DHS cannot assume that a disability limits that person's ability to work and support herself. Rather, DHS should assume that potential U.S. employers will adhere to U.S. laws and accommodate those with disabilities so that they can achieve their potential. This is the goal of both the Rehabilitation Act and the Americans with Disabilities Act. There will be situations where an immigrant comes from a country that affords less opportunity to those with disabilities than does the United States. In such situations, the fact that a person lacks a substantial work history should not be the measure of whether he or she can successfully "provide and care for him or herself, [] attend school or [] work upon admission or adjustment of status" in this country. Proposed 8 C.F.R. §212.22(a) (2)

The rule as drafted allows an examining officer to assume that a person with a disability will not have the ability to support him or herself upon admission. It does not require that the officer take account of U.S. law requiring accommodation in the workplace when assessing whether a person with a disability can work. The proposed rule violates 6 C.F.R. § 15.30 and allows immigration policy to regress toward the standards of the early twentieth century.

The rule will further hurt people with disabilities by restricting medical and SNAP coverage for their caregivers. A 2017 study found that about one quarter of the people who provide home and nursing care to people with disabilities are immigrants. These care providers are mostly low-wage workers who qualify for SNAP and Medicaid coverage. Ironically, while they provide medical and home care, they do not make enough money to buy their own medical coverage. If they choose to forgo Medicaid because of the chilling effect of this rule, it would jeopardize their health, the health of those they care for, and their ability to be consistently available for work.

This proposed rule would harm struggling workers and disabled people. The rule would negatively impact some immigrants. The vast majority of those who would be harmed, however, are economically vulnerable United States citizens who may or may not live in households with an immigrant seeking to apply for LPR status. There is no need to further proscribe LPR eligibility on the basis of "public charge," and the collateral damage that this proposal would cause to people who are not even subject to public charge determinations warrants rejecting the proposal entirely.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucy Potter", written in a cursive style.

Lucy Potter, Attorney