COALITION ON HUMAN NEEDS
1120 Connecticut Avenue, NW · Suite 312 · Washington, DC 20036 · 202.223.2532 · Fax 202.223.2538 · www.chn.org

December 8, 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 Ms. Deshommes:

I am writing on behalf of the Coalition on Human Needs in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM) to express our strong opposition to the changes to the criteria to determine "public charge," published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to immigrants and their families, in particular causing more and deeper poverty, with profound consequences for families' wellbeing and long-term success. The rule ignores the historic pattern of immigrants starting out with low earnings and moving up substantially over time, and also ignores the role that benefits such as SNAP, Medicaid and housing assistance play in allowing people to work and in improving children's health, development, and earnings when they reach adulthood. DHS provides no justification for why changes are needed. We urge that the rule be withdrawn in its entirety, and that long-standing principles clarified in the 1999 field guidance remain in effect.

The Coalition on Human Needs (CHN) is an alliance of about 100 national organizations, including human service providers, faith organizations, policy experts, civil rights, labor, and other groups advocating to improve and protect federal benefits and services needed by low-income and vulnerable people. Since our founding in 1981, CHN has focused on the positive impacts on health, education, employment and income when poor people receive assistance such as Medicaid, CHIP, SNAP/food stamps, housing assistance, SSI and other benefits, and the harms caused to children and adults when needed programs are insufficient or unavailable. CHN also examines the broader impact on the economy when benefits are increased or reduced. For example, increased SNAP benefits provided one of the most effective boosts to the economy during the recovery from the Great Recession.[1]

The proposed rule could deter as many as 26 million people in the U.S. from using the programs their tax dollars help support, preventing access to essential health care, healthy, nutritious food and secure housing. The rule would have devastating consequences for all members of an immigrant family,

[1] file:///C:/Users/debma/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/role-of-food-stamps-in-the-recession%20(1).pdf

regardless of whether some are citizens or not. The proposed regulation would make – and has already made – immigrant families afraid to seek programs that support their basic needs. Targeting low-income families will only exacerbate hunger and food insecurity, unmet health care needs, poverty, homelessness, and other serious problems. If it moves forward, the rule will have ripple effects on the health, development, and economic outcomes of generations to come. Some of our member organizations have already seen families dis-enroll from vital programs out of fear that participation will harm their family's chance at a permanent future here. The proposed rule would increase poverty, hunger, ill health and unstable housing by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for families' wellbeing and long-term success.

For millions of families, Medicaid and SNAP are lifelines that keep them living above the poverty threshold.[2] Forcing parents to choose between their ability to remain with or reunite their family and accessing critical benefits is shortsighted and will harm all of us. By the Department's own admission, the rule "*has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children*."

There is a growing body of evidence that receipt of the benefits listed in this proposed rule have a long-term positive impact, helping people who received assistance during childhood with better outcomes decades later. For example, food stamp access increased high school graduation rates by 18 percentage points. Looking at a broader range of economic and education outcomes, food stamp access among women improved an index of adult economic outcomes including higher earnings and educational attainment, and reduced the likelihood that they would become reliant on the safety net during adulthood.[3] In addition, adult health, as measured by an index including obesity, high blood pressure, diabetes and other conditions, was markedly improved with access to the safety net during childhood.[4] By discouraging eligible immigrants from utilizing such benefits, the proposed rule fails to understand the role they play in helping immigrants to advance economically and is likely to result in increased poverty.

The proposed rule would make massive changes in current policy – without any demonstrated rationale and in contradiction of the available evidence. The proposed rule would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence. Instead, "public charge" would be defined as anyone who simply receives assistance with health care, nutrition, or housing. Under current policy, a public charge is defined as an immigrant who is "likely to become primarily dependent on the government for subsistence." The proposed rule radically expands the definition to include any immigrant who simply "receives one or more public benefits." This shift drastically increases the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work.

---

[2] https://ccf.georgetown.edu/2017/03/09/medicaid-how-does-it-provide-economic-security-for-families/

[3] https://www.ipr.northwestern.edu/about/news/2017/Testimony_Schanzenbach.pdf, https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf

[4] https://www.ipr.northwestern.edu/about/news/2017/Testimony_Schanzenbach.pdf, https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf

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

At 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.

At FR 51174, the Department specifically requests comment on whether the Children's Health Insurance 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. 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. 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."[5]

It is disturbing that the NPRM suggests that CHIP was not included in the proposed rule because the program does not cost a lot of money.[6] The size of a program's budget should not have any bearing on what counts towards determining public charge status; the purpose of this designation is not to provide a backdoor means of cutting federal programs.

The rule also makes other massive changes, such as introducing an unprecedented income test and weighing negatively many factors that have never been relevant. For example, the proposed rule details how being a child or a senior, having a large family, 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. All of these changes massively shift American policy towards immigration, counting wealth and income as the primary indicators of a person's future contribution.

The NPRM itself acknowledges that the proposed rule would cause great harm to individuals, families, and communities, although it fails to quantify this harm and therefore largely ignores it. Both research and Congressional actions over the nearly 20 years that the Field Guidance has been in effect provide

[5] "CHIP and Medicaid: Filling in the Gap in Children's Health Insurance Coverage. | Econofact". Econofact. 2018-01-22. Retrieved 2018-01-23.
[6] 83 Fed. Reg. at 51174.

ample evidence that there is no problem now and no persuasive rationale for change. Rather, this rule appears to be motivated by a desire to change America's system of family-based immigration to grant preference to the wealthy, in ways that the Administration has proposed through legislation but that Congress has rejected. It would create a multitude of ways for individuals to fail the public charge test, and very few ways to overcome it.

At FR 51165, the Department seeks input on whether to consider the receipt of designated monetizable public benefits at or below the 15 percent threshold. The proposed rule would penalize people who are, by definition, nearly self-sufficient. If an individual used even the smallest amount of benefits for a relatively short amount of time, they could be blocked from gaining lawful permanent residence in the United States. The proposal defines "public charge" to include anyone who uses public benefits equal to more than 15 percent of the poverty line for a household of one—just $5 a day regardless of family size. This absolute standard fails to note that the vast majority of such a person's income comes from his or her own earnings.

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. Conversely, the Department proposes that income above 250 percent of the FPG be required to be counted as a heavily weighed positive factor. At FR 51187, the Department invites comments on the 125 percent of FPG threshold. We strongly oppose the use of these arbitrary and unreasonable thresholds. There is no statutory basis for either threshold, and the statement that 125 percent of the FPG has long served as a "touchpoint" for public charge inadmissibility determinations is deeply misleading. The cited statute refers to the income threshold for sponsors who are required to submit an affidavit of support, not to the immigrant subject to the public charge determination, and the Department provides no justification for why this threshold is appropriate. Even less justification is offered for the 250 percent of FPG threshold. 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.

Setting these standards goes well beyond reasonable interpretation of the law and is in fact an attempt to achieve by regulation a change to the immigration policy of the U.S. that the Administration has sought but that would require Congressional action.[7] 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.[8] A single individual who works full-time year round and is paid the federal minimum wage would fail to achieve the 125 percent of FPG threshold. This is clearly not the person that Congress envisioned when they directed DHS to deny permanent status to those at risk of becoming a public charge.

The proposed rule is contrary to existing law and Congressional intent. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against

---

[7] See S.354 (115th Congress), the RAISE Act, https://www.congress.gov/bill/115th-congress/senate-bill/354 and Statement of President Donald J. Trump on August 2, 2017. https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/

[8] https://www.census.gov/library/publications/2018/demo/p60-263.html

immigrants who were eligible for and receiving certain non-cash benefits and legal immigrants' use of public assistance programs declined significantly.[9]

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 an administrative guidance in 1999 which remains in effect today – clarifying that the public charge test applies only to those "primarily dependent on the government for subsistence," demonstrated by receipt of public cash assistance for "income maintenance", or institutionalization for long-term care at Government expense. The guidance specifically lists non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs NOT to be considered for purposes of public charge.[10]

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

The rule is inconsistent with clear Congressional intent that recognizes the importance of access to preventive care and nutrition benefits for immigrants. Since the 1996 welfare law (PRWORA) that overhauled immigrant eligibility for programs and the 1999 INS field guidance, Congress has passed several laws the 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. 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. Congress has repeatedly and intentionally avoided and removed barriers to immigrant access to programs like SNAP, CHIP and Medicaid. For example, under both the 2009 CHIPRA and section 4401 of the Farm Security and Rural Investment Act of 2002, access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) was restored to immigrant children. The administration must defer to Congressional intent on this issue.

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. We strongly believe 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. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.[11] Moreover, negatively weighing a child's enrollment in health and nutrition programs would be counter to Congressional intent.

---

[9] Fix, Michael and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97," (Washington, D.C. : The Urban Institute, 1999).

[10] 64 Fed. Reg. 28689

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

By negatively weighting use of benefits against attaining lawful permanent resident status, the proposed rule ignores the role of Medicaid, SNAP, and housing assistance in helping families to work and rise out of poverty. According to the Census Bureau's Supplemental Poverty Measure, SNAP moved 3.4 million people out of poverty, and housing assistance moved 2.9 million people out of poverty in 2017.[12] Millions of workers in America work in low-wage jobs that do not pay enough to allow them make ends meet. Partial assistance from programs that provide health care, nutritious food, stable housing and economic security support work by keeping families healthy and allowing them to continue working. Congress and states recognize the importance of these programs to support children and lift families out of poverty; in 2009, for example, Congress gave states the option to cover, with federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. Twenty-nine states now do so[13] because they, like Congress, recognize both the current and future economic and public health benefits of ensuring that mother and child have access to care.

At 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 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. The proposed rule ignores the fact that public programs are often used as work supports that empower future self-sufficiency. 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 studies cited in the proposed rule 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.

The proposed rule ignores the history of immigrants' rising income over time. It is part of the fabric of our nation that immigrants who start out with low earnings are able to make gains in succeeding years. Immigrant men who entered the country in 1982-1983, for example, started out earning 60 percent of the median earnings of native-born workers. After a decade, their earnings increased to 92 percent of their native-born counterparts. Immigrant women who entered the U.S. at the same time started out earning 76 percent of native-born women; after ten years their earnings grew to 97 percent of the median for native-born women.[14] The proposed rule penalizes immigrants for their initial low incomes and undermines their ability to improve over time by discouraging them from making use of Medicaid, SNAP, or housing assistance.

Children and youth would be among the hardest hit by the loss of assistance caused by the proposed rule. One in four children in the U.S. – nearly 18 million children – has at least one immigrant parent.[15]

---

[12] U.S. Census Bureau, Supplemental Poverty Measure 2017
https://www.census.gov/library/publications/2018/demo/p60-265.html

[13] Healthcare.gov, Coverage for Lawfully Present Immigrants, (June 15, 2018),
https://www.healthcare.gov/immigrants/lawfully-present-immigrants/.

[14] Research on Immigrant Earnings by Harriet Orcutt Duleep and Daniel J. Dowhan
Social Security Bulletin, Vol. 68, No. 1, 2008 https://www.ssa.gov/policy/docs/ssb/v68n1/68n1p31.html

[15] Migration Policy Institute, Children in U.S. Immigrant Families 2016,
https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families

The vast majority of these children – about 88 percent or 16 million – are U.S. citizens[16] and are therefore eligible for public benefits under the same eligibility standards as all other U.S. citizens.[17] Multiple studies confirm that early childhood or prenatal access to Medicaid and SNAP improves health and reduces reliance on cash assistance. 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.[18] 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.[19] Children with access to Medicaid have fewer absences from school, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults.[20]

But despite citizen children's eligibility for these benefits, rampant fear in the immigrant community has already resulted in parents taking their children out of programs. The widespread "chilling effect" that causes families to withdraw from benefits due to fear is already evident as a result of rumors of the rule. This is explicitly acknowledged in the cost-benefit analysis of the proposal. Community providers have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the leaked draft regulations. Likewise, fear has already been driving immigrant families--who are eligible to receive benefits for themselves or their children--to forgo vital health and nutrition assistance, jeopardizing the health of families and communities alike. Historical evidence from the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) policy changes, which is cited in the NPRM itself, demonstrates that public information alone cannot prevent these damaging consequences, because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically.[21]

By seeking to punish immigrants earning less than 125 percent of the federal poverty level, the proposed rule would also make it extremely difficult for immigrant young adults starting out in entry-level jobs to meet the new income threshold of the public charge test.

DHS should reject the use of public charge bonds as a means of preventing the use of government assistance. At FR 51220, the Department invites comments about the public bond process in general.

---

[16] Migration Policy Institute, Children in U.S. Immigrant Families 2016, https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families

[17] Michael Fix & Ron Haskins, Welfare Benefits for Non-citizens, Brookings Institute, (Feb. 2, 2002), https://www.brookings.edu/research/welfare-benefits-for-non-citizens

[18] 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

[19] 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

[20] 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/.

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

The 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. Monetary bonds in the criminal pretrial context have been discredited as inefficient and unfair, lacking evidence that money motivates people to appear for court.[22] 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.[23]

Additionally, studies show that bonds cause long-term hardship and increase the likelihood of financial instability.[24] Public charge bonds are even more likely to cause long-term hardship, given the indefinite life of the bond.[25] 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.[26] 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. By expanding the market without any consideration for the increased burden for ensuring consumer protection on states and localities, DHS imposes an unfunded mandate on state and local insurance and financial services regulators. Further, research about the impact of criminal trial bonds shows the following:

"In addition, the criminal pretrial justice research confirms that a system revolving around monetary bonds results in greater likelihood of detention for indigent individuals and less detention for the affluent, regardless of actual flight risk or danger to the community. This problematic effect of reliance on monetary bonds is magnified because detention tends to correlate with negative results in final outcomes (higher rates of conviction and longer sentences, in the criminal context). Perhaps even more

---

[22] *Id.* at *See Denise L. Gilman, To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial immigration Detention, 92 Ind. L.J. 157,* 198205 (2016) ("Loose the Bonds").

[23] *See* Selling Off Our Freedom: How insurance companies have taken over our bail system (May 2017) ("Selling Off Our Freedom"); The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions (Nov. 2016) ("High Cost of Bail") at 12-13, and Vera Institute of Justice; Past Due: Examining the costs and consequences of charging for justice in New Orleans (Jan. 2017) ("Past Due"); *see also* Loose the Bonds, n.43 *supra*, at 199.

[24] *See, e.g.,* Color of Change and ACLU, Selling Off Our Freedom: How insurance companies have taken over our bail system (May 2017) ("Selling Off Our Freedom, n.45 *supra*"); *see also* Pretrial Justice Institute, Pretrial Justice: What Does It Cost? Pretrial Justice: What Does It Cost? (Jan. 2017).

[25] 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.

[26] *See, e.g.*, Selling Off Our Freedom, n.45 *supra*; High Cost of Bail, n.45 *supra*; Past Due, n.45 *supra*; UCLA School of Law Criminal Justice Reform Clinic, The Devil in the Details: Bail Bond Contracts in California (May 2017) ("Devil in the Details"); *see also* Brooklyn Community Bail Fund, License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City, (Jun. 2017) ("License & Registration") at 2.

worrisome, the evidence suggests that financially-based pretrial detention systems have a disparate negative impact on minorities."[27]

The proposed rule would penalize low-income immigrants in multiple ways. The use of bonds would impose still another penalty in the form of multi-year costs.

The proposal disproportionately harms many population groups. While all types of individuals and families would be hurt by this rule, communities of color, people with disabilities or chronic health conditions, LGBT immigrants, and victims of domestic violence and sexual assault – all communities that are disproportionately poor – will by disproportionately harmed by this rule.

The proposed rule will have a disproportionate impact on people of color. While people of color account for approximately 36 percent of the total U.S. population, of the 25.9 million people who would be potentially discouraged from utilizing benefits by the proposed rule, approximately 90 percent are people from communities of color (23.2 million).

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.[28] 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.[29] 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 disability and the discrimination they experience because of it. For example, about one-third of adults under age 65 enrolled in Medicaid have a disability, compared with about 12 percent of adults in the general population. Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability.

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.[30] People with HIV, either symptomatic or asymptomatic are protected by the Americans with Disabilities Act (ADA).[31] 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.[32] The proposed rule would use an HIV diagnosis to exclude both applicants and applicants seeking to unite with disabled family members.

---

[27] *See* Denise L. Gilman, To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial immigration Detention, 92 Ind. L.J. 157, 198-199 (2016) ("Loose the Bonds").

[28] 6 CFR 15.30(b)(1)(ii), (iii), (iv)

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

[30] www.cdc.gov/hiv/basics/statistics.html

[31] Bragdon v. Abbott, 524 U.S. 624 (1998)

[32] 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504

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. 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.

While victims of domestic violence and sexual assault seeking immigration status are exempt from the application of the public charge ground of inadmissibility when adjusting through the VAWA or U pathways, many victims and their family members do not seek immigration status in those named categories, and will be harmed as a consequence. 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.[33]

The proposed rule discriminates against those with limited English proficiency, assuming without evidence that such individuals will not be able to work. The public charge statute does not include English proficiency as a factor to be considered in an individual's assessment and instead refers only to "education and skills," among other factors. The agency offers a limited number of justifications for its proposal to add English proficiency to the list of factors, all of which are without merit. For example, the agency states that those who cannot "speak English may be unable to obtain employment in areas where only English is spoken." There is a significant difference between English proficiency and having no ability to speak the language, which the agency appears to conflate 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. 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.

The proposed rule would reduce family stability, making it more difficult for families to work and increase their income. The rule would make it very difficult for older people to satisfy the new requirements and would harm low-income elders by discouraging their use of subsidies for Medicare Part D prescription drug coverage. But families who take in a grandparent or other relative can more easily provide child care without high costs. Similarly, if other relatives are allowed to join the family, their earnings can contribute to the rent and other expenses. However, the larger family size would make it harder for a family to exceed 250 percent of the federal poverty level, which would cause them to lose the only positively weighted criteria.

In sum, we strongly urge you to withdraw the proposed rule because it would worsen poverty for millions of families, with an especially negative impact on children, people of color, people with disabilities and other groups, fails to grasp the positive role Medicaid, Medicare prescription drug coverage, SNAP and housing assistance have in helping families to make economic gains, or the historic trends of income growth over time among immigrants, and is inconsistent with federal law and Congressional intent.

---

[33] See, e.g., Eleanor Lyon, *Welfare, Poverty and Abused Women: New Research and its Implications*, National Resource Center on Domestic Violence (Oct. 2000), available at https://vawnet.org/material/welfare-poverty-and-abused-women-new-research-and-its-implications;

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

Sincerely yours,

Deborah Weinstein
Executive Director
dweinstein@chn.org; (202) 223-2532 x111

1k2-9706-x5tw (comment file number)