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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

Dear Ms. Deshommes:

Empire Justice Center submits this comment in opposition to the Department of Homeland Security's (DHS's) Notice of Proposed Rulemaking regarding the determination of "public charge," posted in the Federal Register on October 10, 2018. The proposed rule would, if adopted, cause untold harm to immigrant families in this country, with consequent damage to our entire nation. We find no clearly articulated justification for the proposed rule changes, and thus we must conclude that they simply represent a groundless furtherance of this administration's hostile and inhumane treatment and attitude toward immigrants who have come to our country. We strongly urge you to withdraw this rule and keep in effect the principles set forth and clarified in the 1999 field guidance.

## **I. INTRODUCTION**

Empire Justice Center is a New York-based, statewide legal services organization, with offices in Rochester, Albany, White Plains, Yonkers and on Long Island. Empire Justice Center provides backup, training and support for legal services providers and other community-based organizations across the state that represent low-income New Yorkers. We also undertake policy research and analysis and engage in legislative and administrative advocacy. Finally, we represent low-income New Yorkers in a wide range of poverty law areas including immigration, government benefits, health, consumer rights, LGBTQ rights and domestic violence.

Empire Justice has for a number of years engaged in policy advocacy and individual legal representation on behalf of immigrants in this state. New York State, home of the Statue of Liberty, is a symbol of this nation's historical welcoming of immigrants from around the world and of the ways in which we benefit from and are strengthened by their presence. Amid the urgent and intensifying need to assure that immigrant rights are upheld, we have expanded our involvement in these issues. We have played a leading role in the enforcement of the civil rights of those who have limited English proficiency, and we have represented many individuals seeking to become citizens or to adjust their status and to protect against unwarranted punitive actions. Most recently, we have been able to significantly expand our capacity to provide legal representation and information as a grantee of the state's Liberty Defense Project. In addition, Empire Justice has done considerable work over many years in the realm of government benefits. This work has included direct individual client representation, litigation, and policy advocacy. We believe that the receipt of these benefits, while inadequate, is often indispensable in enabling families and individuals to achieve a reasonable level of stability in terms of meeting basic needs, such as housing, food and health care. This economic stability can make it more feasible to pursue education, training, employment and the chance for a better life, and helps to enhance community stabilization as well.

Empire Justice Center is deeply concerned about the well-being of immigrant individuals and families living, working and helping to bring vibrancy to communities across New York State. Immigrants now represent over 20% of New York State's population, compared to 13% nationwide. Every year, an average of more than 140,000 state residents become legal permanent residents, and more than 35,000 refugees have settled in New York in the past decade. Remarkably, at a time when our state's population might have otherwise been in decline, immigrants have made the difference in helping to stabilize population numbers, a benefit to our state in many ways.

Immigrants continue to make enduring contributions to our state's work force, economy, and culture. We fear sweeping harm to our state and the nation as well as to thousands of individuals and families if these rules are adopted. It is for this reason that we write to express our determined opposition to the proposal.

In this introduction, we provide an overview of our objections to the proposed rules, to be followed by somewhat more detailed discussions of specific subject areas, including the impact on certain populations and issues regarding specific types of benefits.

**There is no clear justification for the drastic changes that have been proposed.**

The proposed rules broadly and significantly favor immigrants with substantial resources, while making it dramatically more difficult for those of modest means. The current definition of public charge, limited to those who are "likely to become primarily dependent on the government for subsistence," would now be drastically broadened to affect any immigrant who "receives one or more public benefits." The public charge test is currently limited to receipt of cash welfare assistance and Medicaid long-term institutional care. The revised rule would expand the test to include receipt of most Medicaid programs and services, housing assistance

such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program) and more. Historically, millions of immigrants have come to the United States with virtually no resources and have flourished. The fact that an immigrant may for some period of time require some assistance indicates very little about future need; indeed the household is very likely to find employment and subsequently make a valuable contribution to our society and our economy, as immigrants have done since the founding of our nation.

**The proposed public charge tests intensify the bias against people with modest or low incomes.**

The proposed rule represents a radical change in policy with the adoption of income tests and other new measures that put a premium on one's past ability to accumulate wealth, and intentionally discriminate against those with lower incomes. This change is not supported by the experience of American history, in which many immigrants who have made invaluable contributions to the growth and success of this nation were poor, with limited resources, limited English and limited education when they arrived. Among the factors that the rule proposes to count against an immigrant are: being a child, being a senior, having a large family, and having a low income, while having a higher income will weigh heavily in the individual's favor. This radical change – making an historically erroneous assumption about family-based immigration<sup>1</sup> – turns on its head the equitable, beneficial and welcoming American approach to immigration which has long been a great strength of this country, and which is perhaps best expressed in the words of Emma Lazarus' poem *The New Colossus*: "Give me your tired, your poor,/ your huddled masses yearning to breathe free./ The wretched refuse of your teeming shore./Send these, the homeless, tempest-tost to me,/I lift my lamp beside the golden door!"

**In leaked commentary to an earlier draft of the rules, the Department of Homeland Security (DHS) has already acknowledged the devastating harm that the proposed rule will cause to immigrants and their families, communities, states, schools and health care providers.**

In a leaked draft of its commentary on the proposed rules, DHS acknowledged that the proposed rule had "... 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." While changes were made in the final proposed rule, the reality is that even DHS has continued to recognize the drastic impact these rules might have. It would be hard to more effectively make the case against adoption of these rules than by citing the DHS commentary to the final proposed rule. The commentary notes that many immigrants eligible for benefits would forgo them or disenroll, and then very matter-of-factly reviews some of the possible consequences if the rule were to be adopted:

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<sup>1</sup> A recently released study notes that assumptions are made about immigrants, based on the fact that many have relatively modest earnings shortly after arrival. Such assumptions ignore the fact that "...the earnings of immigrants in general have increased dramatically during their first decade in the country, Harriet Duleep, et al, "The Immigrant Success Story," American Immigration Council, June, 2018.

- “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.”

**The proposed rules will have a chilling effect equal to or greater than the direct damage caused to individual immigrants and their families.**

The proposed regulation would make — and has already made — immigrant families too frightened to seek out benefits and programs that might enable them to meet their most basic needs, or, to help move to the next rung of the ladder of opportunity. The proposal will also prevent immigrants from using the programs their tax dollars help support, thereby preventing access to essential health care, healthy, nutritious food and secure housing. As noted by DHS, it will inevitably increase poverty, hunger, ill health and unstable housing by discouraging enrollment in these crucial programs, with profound consequences for families’ well-being and long-term success.

Furthermore, the fear created by these rules would extend far beyond the individuals directly subject to the “public charge” test. Indeed it has already begun to have this chilling effect. Threatening and anti-immigrant rhetoric coming from this administration combines with fear and confusion about the significance and the details of the rules to induce households to disenroll from or forfeit their right to pursue needed benefits. This is already true and will be multiplied many times over if these rules are adopted. Evidence from the 1996 “welfare reform” demonstrates that substantial – and often punitive – changes in complex rules can have damaging consequences, partly because of the direct impact of the rules themselves, but also because of misunderstandings, confusion and fear. In this way, thousands of people who would not be harmed by the rules will nevertheless choose, to their great detriment, to disenroll from or not to pursue essential benefits rather than take perceived risks.

**Impact on families**

The proposed rule would cause major harm to the children of immigrant parents, whether they are immigrants or citizens themselves. Children’s well-being is of course inextricably linked to the well-being of their parents and the entire family.<sup>2</sup> When parents struggle to provide for and protect their children, the impact on the children can be acute. When the parents experience intense stress, health issues, housing instability, the children are affected accordingly. When

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<sup>2</sup> See, for example, “The Proposed Public Charge Rule and Young Children, Center for Law and Social Policy, October 2018.

the parents are able to achieve a reasonable level of stability, the children thrive. Thus any policy that, among other factors, induces parents to forgo urgently needed assistance, even for a short period of time, causes harm suffered deeply and needlessly by the entire family.

## **II. HEALTH CARE**

It serves the public interest to allow as many people as possible to have access to preventative health care services. The World Health Organization has found that:

Access to and use of health services enables people to be more productive and active contributors to their families and communities. It also ensures that children can go to school and learn. At the same time, financial risk protection prevents people from being pushed into poverty when they have to pay for health services out of their own pockets.<sup>3</sup>

Under the proposed rule, DHS officials would consider use of certain previously excluded programs, including Medicaid, the Supplemental Nutrition Assistance Program, the Medicare Part D Low-Income Subsidy Program, and several housing programs, in making public charge determinations. Specifically, officials would consider use of these programs subsequent to the effective date of the proposed rule to be a heavily weighted negative factor against the applicant. In addition, having received subsidized health insurance coverage will be considered a “heavily weighted negative factor” in public charge evaluations.

If adopted, the proposed rule will almost certainly lead to broad decreases in participation in Medicaid and other programs that support public health among legal immigrant families and their primarily U.S.-born children, well beyond those directly affected by the changes. The proposed rule will increase, and has already increased, confusion and fear among legally present immigrant families concerning their decision to access public benefits programs for themselves and their children. The fear of an adverse impact has caused, and will continue to cause immigrants to disenroll from government assistance programs that support their health and well-being, or to decide not to pursue these benefits in the first place. If this rule is approved, millions of immigrants will suffer from the loss of these benefits. Access to early and preventative care is a significant factor in achieving better health outcomes. Without access to preventative care, many will die of preventable illnesses.

Preventing legally-present immigrants from participating in public health coverage will not only harm immigrants: it will also reverse years-long efforts in many states to contain the costs of health care by preventing unnecessary emergency room visits and hospitalizations. Emergency room care is among the most expensive types of care in America. Many health services are delivered more cost-effectively and with better health outcomes outside of the emergency room setting, such as in a doctor's office or an urgent care clinic.

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<sup>3</sup> World Health Organization, Questions and Answers on Universal Health Coverage.

Without participating in non-emergency Medicaid and subsidized health plans, many immigrants will not be able to receive ordinary preventative health care. They will resort to seeking treatment at the emergency room. In many cases, this is to say, they will seek that treatment later than ideal, and in the most expensive venue.

In 1999, the federal government, under President George H.W. Bush, confirmed that our immigration policy would not count the use of Medicaid, the Children's Health Insurance Program (CHIP), or other non-cash benefits in public charge determinations, with the exception of Medicaid for long-term institutional care. The explicitly stated reason for clarifying the policy was to make sure that eligible immigrants and their eligible – often citizen – children not refrain from seeking fundamental assistance, particularly assistance with health and nutrition. It was clear to policymakers at the time that failure to access these benefits has predictable adverse impacts, not only on immigrants and their families, but on the general public health and welfare.

It is extremely disturbing and misguided that the proposed rule reverses this policy by including receipt of health-related assistance, as well as nutrition and housing assistance, in making public charge determinations. As noted, among the health care programs that would now be included in the public charge determination are non-emergency Medicaid and the Medicare Part D Low-Income Subsidy Program, and DHS has specifically requested public comment on the question of whether CHIP and subsidies for Affordable Care Act Marketplace coverage should be taken into account as well. We of course strenuously oppose such a change.

The Medicaid program plays a central role in the provision of health care to people of low or modest income. It provides access to preventive and primary care, prenatal care and care for chronic conditions, and protection against unaffordable medical costs. This helps to ensure the health of families and children, which can in turn makes it more feasible for parents to seek and retain employment. Over 80% of immigrant families have at least one full-time worker, and many work in lower-paying jobs for which health coverage is not provided. Thus the decline in the ability or willingness to access health benefits like Medicaid portends a deterioration of health and a vast increase in medical debt. Both of these factors impede the ability to retain jobs and to raise healthy children.

In anticipation of this proposed rule, many immigrants known to Empire Justice Center have refrained from participating in benefits for which they were eligible, such as Medicaid and CHIP even when doing so could not be counted in the public charge determinations. If the proposed rule is adopted, many thousands more immigrants, out of fear or confusion, will not participate in public health benefits, even where, for one reason or another, they would not be subject to the revised rule. If Medicaid/CHIP disenrollment rates fall between 15% and 35%, an estimated 875,000 to 2 million citizen children with a noncitizen parent could lose Medicaid/CHIP coverage despite remaining eligible for those benefits. And the disenrollment process has indeed already begun, with the inevitable results. It must be anticipated — and research from prior policy changes such as the 1996 federal welfare reform confirms — that adoption of these

regulations will like result in as much as a 25% rate of disenrollment, a sharp reduction in health insurance coverage with attending negative health consequences.

The New England Journal of Medicine has observed that, in addition to disenrollment or failure to pursue health-related benefits, immigrant households are likely to forgo benefits such as housing and nutritional assistance. The decision not to participate in these programs has a direct impact on adult and child health; the loss of this array of benefits is also likely to condemn families to deeper levels of poverty. The NEJM reminds us that “poverty is a primary determinant of risk for illness and death.” By contrast, utilization of benefits such as EITC, WIC, and SNAP improve health throughout the course of life and increase self-sufficiency in adulthood.

Finally, NEJM notes that “...for health care providers such as federally qualified health centers and public hospitals, the expanded public-charge rule could lead to more patients lacking health coverage and higher costs from uncompensated care. It could also create confusion among patients from immigrant families and jeopardize progress that has been made in improving access to health care among language-minority populations...”

The Kaiser Family Foundation offers a stark view of the likely impact of the new regulations on immigrants and their families, predicting that “...reduced participation in Medicaid and other programs would negatively affect their health and financial stability and the growth and healthy development of their children... It then goes on to cite the outcomes set forth in the DHS’s own assessment of the proposed rule, noted in the introduction to these comments.

The NEJM concludes that “...if this rule takes effect, it will most likely harm the health of millions of people and undo decades of work by providers nationwide to increase access to medical care for immigrants and their families.”

In sum, this policy change will discourage immigrants from participating in public health benefits. The human and fiscal costs of this change are significant. The proposed rule is a dramatic, cruel, and shortsighted reversal of Federal immigration policy. It should not be adopted.

***The health care impact: A client story from Empire Justice Center attorneys in Westchester County, NY.***

*We recently filed an affirmative deferred action petition for a 24-year-old client who is in kidney failure and needs legal status in order to receive a kidney transplant from his sister. The client would be eligible for DACA, but now that the program is canceled, his only option is to file for affirmative deferred action. He will need hemodialysis three times a week unless and until he is able to receive a kidney transplant from his sister. If his petition is granted quickly, he will be able to receive his lifesaving kidney and resume his activities in the community. While we hope that he will receive Medicaid once his petition is approved, we must now be concerned that his receipt of Medicaid could negatively impact his ability to adjust his status later in life or to obtain benefits under DACA if Congress enacts a legislative fix for that program. He will most*

*likely need to remain enrolled on Medicaid for the near future in order to obtain needed medication; this could render him a public charge if this rule becomes final.*

### **III. FEDERAL HOUSING ASSISTANCE**

Under current rules, receipt of federal housing assistance is not taken into consideration in the public charge test. Under the proposed rule, the range of benefits that will be taken into consideration is significantly expanded and would now include receipt of federal housing assistance. The proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance, including Section 8 Moderate Rehabilitation, and Public Housing.

It is beyond dispute that, throughout our country, the lack of affordable housing poses one of the greatest challenges to families of low and modest incomes. Even households with one or more members employed full-time struggle to pay the ever-increasing cost of even very modest housing. The impact of this crisis, chronic housing insecurity, homelessness and frequently unstable living arrangements, takes its toll on individuals and families. Adults and children in unstable housing tend to have diminished achievement in school and in employment and suffer in terms of health and family well-being. These federal housing subsidy programs represent a critical protection against the hazards of housing instability.

The proposed rule, by including these invaluable housing programs among the indicators that a person or family are likely to become public charges, inevitably means that immigrants and their families may be forced to forego urgently needed housing assistance for which they may well be eligible. If instead, they do receive this assistance, they might jeopardize their ability to adjust their status or remain in the United States. And as is the case in so many comparable situations, the fear of deportation or loss of status will dissuade households from seeking housing assistance even when, because of their particular situation, they would not be at risk. Indeed, well before this rule is in effect, it is having this impact, the forfeiture or avoidance of needed benefits due to misinformation and fear. A policy that creates a barrier to families and individuals accessing critical housing assistance not only threatens their well-being, but inflicts a long-term negative impact upon their entire community.

### **IV. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)**

This proposed public charge rule will keep millions of families and individuals from securing the nutrition assistance that is essential for health and well-being. Hunger or food insecurity make it less likely that adults can secure and retain employment to support and protect themselves and their families. The harm to millions of lawful immigrants and their families, including U.S. citizen children with immigrant parents, is incalculable.

The proposed rule reverses longstanding current law, under which receipt of non-cash benefits is not a factor in the public charge determination. As the Food Research and Action Council states, "If adopted, the rule would lead to a hungrier, sicker, and poorer nation, and would have the most severe impact on immigrants who are people of color, children, seniors, non-English speakers, and low- or moderate-income earners."

There is a growing body of evidence that receipt of SNAP has a long-term positive impact, helping people who received assistance during childhood with better outcomes decades later. For example, food stamp access has been found to increase high school graduation rates by 18 percentage points. Receipt of SNAP benefits improves health, and nutrition and correlates directly with reductions in poverty. For millions of families, SNAP is a government benefit that acts as a lifeline, often making the difference that enables a family to remain above the poverty threshold. Forcing parents to choose between their ability to remain with or reunite their family and accessing critical benefits is shortsighted and harmful.

As has been alluded to previously, the harsh impact of the proposed rule is exacerbated by the fact that the proposed rules will make – indeed are already making – immigrant families fearful of seeking resources from programs that are designed to support their most basic needs. Recently published research suggests that immigrant households legally eligible for food stamps and other basic needs benefits have already stopped participating in these programs in striking numbers. It appears that widespread fear in immigrant communities has played a significant role in the reduced receipt of SNAP and other anti-hunger programs such as the WIC program, which provides nutritional aid to pregnant women and children. These are programs that, even under the new rules, would not affect the public charge determination. The inevitable consequence will be increased hunger and food insecurity, with resulting impacts on health, well-being, economic security, school performance and job retention.

Withdrawing the proposed rule would ensure that we do not further contribute to poverty for millions of families. This public charge proposal fails to grasp, much less embrace as it should, the positive role SNAP has played in helping families to enjoy positive outcomes in terms of health, employment, education and family well-being, and is inconsistent with both federal law and Congressional intent.

**One of our Westchester office attorneys shared this story about a SNAP recipient’s fears.**

*One of our attorneys is representing a woman who is a victim of domestic violence and has a pending U-visa application. The client called the attorney, expressing great concern that her children’s receipt of food assistance from the SNAP program might negatively impact her pending case. The reality is that, as a U-visa applicant, she is not subject to a public charge determination, nor is her citizen children’s receipt of government benefits a factor to be considered in her U visa application. Had she not had a knowledgeable advocate to advise her, as is the case for thousands of immigrants, she might well have foregone the receipt of this critical assistance rather than jeopardize her application.*

**V. PEOPLE WITH DISABILITIES**

The proposed public charge rule makes people with disabilities uniquely vulnerable. Individuals with disabilities often have specific and particularly urgent needs for access to medical care and a range of other services. To the extent that receipt of these benefits and services may result in being denied the opportunity to adjust immigration status, disabled individuals are very likely to feel compelled to choose between untenable options.

Clearly this new rule will discourage families from accessing important services for fear of harming their immigration status. People with disabilities and their families often need to use government benefits in order to stay nourished, housed, and healthy. Under the new rule, using – or even just applying for – these benefits may ultimately impact their immigration status or ability to adjust their status.

We believe it is inappropriate and simply inaccurate to consider the receipt of public benefits as a predictor of a person’s likelihood of becoming a public charge. The rule explicitly calls for consideration of a person’s health in making the likely public charge determination. The fact that individuals have particular medical conditions may count heavily against them, and the absence of such conditions may be taken as a “positive factor.” This proposed policy is remarkably unfair to people with disabilities. By contrast, with the Americans with Disabilities Act (ADA), our nation embraced the notion that with appropriate accommodations, people with disabilities can thrive and enjoy decent, productive lives and contribute richly to our society, our culture, our economy. This concept should be an integral part of our immigration policy as well, where those with disabilities can secure the benefits and services they need and not be punished for having done so.

## **VI. OLDER ADULTS**

Yet another group likely to be harshly impacted if the proposed rule is adopted are senior citizens. Like so many others, seniors and their families would be forced to make impossible choices between obtaining a permanent legal status in the U.S. and meeting their basic needs, caring for their children and aging parents, and keeping their families together.

Age alone weighs negatively against older adults undergoing the public charge assessment. Simply by being older than 61, they have a strike against them, and if they are low income, or have significant medical issues, then their risk of being denied an adjustment of status is significantly increased. If they have received any of a number of benefits, the likelihood that they will be able to adjust status decreases. Programs that are especially important to seniors include Medicaid, Medicare Savings Programs, Medicare Part D Low-Income Subsidy (“Extra Help”), and the Supplemental Nutrition Assistance Program (SNAP).

An increasing number of immigrants are seniors, and they are often critical to the well-being of their intergenerational families. A growing share of paid caregivers for older adults are also immigrants, and many of these care providers are older adults themselves. But the pay in this industry is typically quite low, and so these important providers often need to supplement their income with public benefits such as SNAP and Medicaid. These new rules would place these caregivers at risk, and thereby threaten their ability to remain healthy and housed, as well as their availability to provide much-needed services.

As has been referenced before in these comments, these new rules, even though only in proposed form and not yet in effect, are already having an impact. Immigrants, particularly the elderly, are perhaps more vulnerable to misinformation or insufficient information, and many

are therefore already forfeiting or are declining to apply for the benefits that may make the difference in keeping them from falling into poverty.

As we know from extensive research findings, the failure to receive available benefits, whether for food, or housing, clothes, medication, or essential services can destabilize an individual or a family, with a resulting impact on health, employment outcomes, and family well-being. And the older adult population often has greater than average health care needs. So access to affordable care is critical, for the individual, the family and the community.

## **VII. TEMPORARY PROTECTED STATUS (TPS)**

New York State is home to over 26,000 TPS holders who contribute over \$1.5 billion annually to the state's economy. Those who are eligible for this status come from El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan and South Sudan, some of the most dangerous and economically challenged places on earth. Many people with TPS status have lived in the United States for 15 to 20 years, and have built families, businesses, and careers. They now may face the end of the protections they have relied upon for so many years as TPS protections are being terminated for immigrants from many of these nations. Because of their long residence in the United States during which time they have developed family ties, or due to other family relationships, many TPS-holders have become eligible for family-based immigration benefits, and may be eligible to adjust their status on that basis. These new rules will punish this very vulnerable community for accessing Medicaid or other newly targeted benefits by denying access to lawful permanent residence.

## **VIII. CHILDREN**

Between the time that a draft of the regulation was leaked in March 2018 and the final proposed regulation was published, the benefits that household members, including U.S. citizen children, receive was dropped as a basis for finding the risk of public charge. This was a welcome modification, but the proposed rule itself is still likely to put children at risk. The rule's current emphasis is only on the limited benefits that might be received by the noncitizen seeking adjustment. But since the determination of public charge is a prospective examination, an immigrant living with a family that is getting food stamps or housing assistance who adjusts to permanent resident status, will then become eligible to become a member of the household receiving the assistance. This might well result in a prospective determination that the immigrant is likely to become a public charge.

Hardworking adults struggling to raise healthy, thriving children are likely to forgo or face a harsh penalty for receiving benefits designed to help the family meet its nutrition, health care, and other essential needs. Evidence suggests that even the threat of the new rules is terrifying immigrant families, and deterring them from seeking the help they need to lead a healthy and productive life.

There are an estimated 16 million children who are U.S. citizens, and who have at least one immigrant parent. Millions of these children receive benefits that have a direct and crucial impact on their health, nutrition and general well-being. Punishing their families for pursuing

needed benefits, especially by instilling fear, is cruel and will have a drastically harmful impact on children, including the many children who are U.S. citizens and are fully eligible for the benefits.

When children in low- or modest-income households receive basic benefits, it is not surprising that, in virtually every measure of well-being, they fare better than households with comparable income who do not receive such assistance. Thus, denying access to benefits, whether by rule or by intimidation, will negatively affect health, access to decent housing, nutrition, and will only entrench the array of difficulties that these benefits seek to ameliorate. Of course, the well-being of the children is inextricably linked to the well-being of the parents; if the parents fail to access urgently needed assistance, the children will suffer. Children do better when their parents are mentally and physically healthy. These outcomes, in turn, make it much more likely that children will thrive in school, remain in school, and eventually have higher paying jobs as adults. Counting the receipt of these benefits as a negative factor in the public charge assessment is contrary to the purpose of the public charge ground of inadmissibility.

#### **IX. MARGINALIZED POPULATIONS**

We believe with unfortunate certainty that virtually all immigrants and their families are likely to suffer if the proposed rules are adopted. But it must be recognized that people who are often seen and treated as marginalized in our country would face more intense and sometimes unique challenges in coping with the revised rules.

People who are lesbian, gay, bisexual, or transgender, people of color, individuals living with HIV/AIDS, often experience discrimination in employment that will make it more difficult for them to meet income requirements. This will happen without regard to the fact that if allowed remain in or come to this country, or to adjust their status, the evidence of centuries ensures that they will thrive and become integral parts of American society, culture and the economy. While they, and certainly their children, like so many immigrant groups before them, will inevitably succeed and make valuable contributions, there may initially be educational, language and skills limitations. In the beginning, they and their families may need certain of the non-cash benefits – now included in the proposed regulation as a sign that they are public charges – to weather the early days of their lives in the U.S. The income tests and the much more rigorous public charge test in the proposed regulation may well jeopardize the ability to remain and to thrive. Furthermore, these individuals are likely to have experienced discrimination, hardship and danger in the nations from which they have come (or fled), making their ability to remain here all the more critical. And as with all of those affected by the new rule, including those who mistakenly believe they are covered, noncitizens seeking permanent status and their families will be driven to choose between needed government assistance, thereby endangering their status in this country, or forgoing such assistance to the detriment of their families' health and well-being. We should not create this untenable dilemma for our immigrant population.

## **X. Use of Credit Scores and Reports**

We also strongly oppose the DHS proposal to use credit scores and reports in making public charge determinations. As explained in detail by the National Consumer Law Center,<sup>4</sup> credit reports and scores are not designed to be used in the manner proposed by DHS, and will distort public charge investigations when used inappropriately. These scores are often artificially low for immigrants, among others, who have not yet developed a credit history, and they are frequently inaccurate. Additionally, as NCLC cautions, “credit reports and scores reflect stunning racial disparities,” a fact that should bar their being used in making a critical determination in the lives of the many immigrants of color.

In addition to the important points raised by the NCLC, one other factor needs to be considered, that is, bias against non-homeowners. Consumers without a mortgage have credit scores that are, on average, 70 to 90 points lower than those with a mortgage, even when the mortgagor is behind on payments. As a result, using a credit score as a determining factor discriminates against people who do not have a mortgage or own a home.

## **XI. ECONOMIC IMPACT #1: THE IMPACT OF BENEFITS DISENROLLMENT**

In our comments thus far, we have tended to focus on a basic humanitarian concern, the painful decision of whether to receive needed benefits that might jeopardize a family’s ability to remain in this country or to adjust their status. But it is vitally important to also understand the valuable economic contribution that immigrants have historically made and continue to make in this country. There are a number of ways in which the proposed rule would adversely affect the economy of the nation and, more specifically, of New York State.

The Fiscal Policy Institute has looked at one key element of the probable financial impact of the adoption of the proposed public charge rules. If thousands of immigrants disenroll from public benefits programs, there would be a rapid cutoff of millions of dollars that now flow to New York State in the form of these benefits.

We have noted that the proposed rule would most directly impact people applying for a green card through a family-based petition, as well as those seeking to extend or change their temporary non-immigrant status in the United States. The new rule might lead to the denial of green cards to hundreds of thousands of otherwise eligible applicants for family-based visas. But it may well be that an even larger number of immigrants who are not even subject to the public charge rules would nevertheless be drastically affected because of fear and confusion over the potential consequences of receiving food, health, or housing benefits for which they are eligible. Based on research about the past impacts of changes in immigration and public benefits policy, FPI estimates “...that 24 million people in the United States would be affected by the chilling effect of the Trump Rule, including 2.1 million New Yorkers.” This loss would primarily stem from families and individuals disenrolling from benefits programs in misplaced fear of the risks of continued receipt of the assistance.

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<sup>4</sup> “The Wrong Tool for the Wrong Purpose: Why the Credit Scoring Provision in the Immigration Public Charge Proposal Is Illogical and Ill-Advised,” National Consumer Law Center, October 2018.

One great irony is that most of these programs are conceived of as work supports. As is unfortunately the case in our country, many people, including many immigrants, work hard and perform valuable tasks, but do not earn enough to get by. This is especially true in high cost areas, such as much of New York State. These benefits enable low-wage earners to secure decent housing, health care and adequate nutrition. When they disenroll from those vital benefits programs, their capacity to maintain these decent living conditions and, in turn, retain their employment jobs, is severely compromised.

When hundreds of thousands of immigrants and their families forfeit their lawful right to apply for and receive benefits to help them meet their basic needs, billions of dollars of federal aid are no longer injected into the local economy. Applying FPI's mid-level estimate – looking only at the loss of SNAP and Medicaid funds – New York State residents would receive about \$2.2 billion less in federal benefits, with ripple effects on businesses and the economy. FPI estimates that ripple effect at \$3.6 billion, and with a resulting loss of roughly 25,000 jobs.

In discussing the impact of people disenrolling from benefits programs, we have emphasized the dollars lost to local economies when households forgo the right to receive these benefits. It must also be remembered that when a family disenrolls from a nutrition program such as SNAP or WIC (nutrition assistance for Women, Infants and Children), this means that an individual or a family is much more likely to experience hunger or food insecurity. This brings stress, health problems, worsening outcomes in school and in employment, and a general decline in family well-being. When a family forgoes health care benefits, their health is inevitably compromised, they are more likely to require emergency care, and, as with the loss of anti-hunger assistance, virtually every indicator of family well-being declines.

## **XII. ECONOMIC IMPACT #2: IMPACT ON IMMIGRANT EMPLOYMENT**

In addition to the local or state's diminution benefits-related income when immigrants disenroll from benefits programs, the public charge rules has the potential to dramatically impact immigrant employment. The New American Research Fund estimates that of the immigrants in New York State who would be affected by the proposed rule, 92% are active in the labor force and more than 183,000 have at least some college education. If a significant number left the country or were compelled to drop out of the work force, the cost to the New York State economy would be well into the billions of dollars.

The Fund estimates that more than 3% of all workers in education and health services would be affected by the rule change, 5% of all construction workers, and comparable numbers of workers in manufacturing, trade, transportation and utilities, and nearly 10% of the workers in accommodations and food. In other words, not only would the affected immigrants suffer significantly, but the New York State economy, as well as the national economy, would experience a dramatic decrease in their work force, with the attendant crisis that might engender.

***From an advocate in the Empire Justice Center's Long Island office: This is the story of a family that received assistance through our organization. Originally from the Caribbean, the M. family***

*had lived in the U.S. for several years, where they had planted roots in their community with their five children, three of them U.S. citizens. Mrs. M. contacted our office after her husband lost his job, and the family lost its source of support. At the time, Mrs. M. was being treated for breast cancer and her 12-year old daughter was undergoing chemotherapy for lymphoma. Without a source of income, the family fell behind on the rent and was in danger of being evicted.*

*Our office assisted the family in applying for SNAP benefits and emergency financial assistance. With the help of Child Health Plus, their daughter was able get the medical treatment she needed and return to school. Mr. M. now works two jobs, and Mrs. M. regained her health with the help of Medicaid and has been working in her local school district helping children with disabilities. They are very proud to now own their first home.*

*Had the proposed rules been in effect, Mr. and Mrs. M. and their two non-citizen children, could have been penalized when applying to adjust their immigration status due to their receipt of government benefits. Yet without such assistance, they might not have survived. They also might well be penalized as a large family, based on the misguided assumption that they might again need assistance in the future.*

*According to Mrs. M., “Coming to America is a dream come true for many immigrants from all walks of life. Lots of people believe that all immigrants come here illegally. This is not the case for many of us. My family and I came here legally, on a plane, with proper paperwork. However, this immigration system often treated us like common criminals and interfered with our ability to adjust our status. Contrary to the way immigrants are portrayed, we are not here to steal jobs or commit crimes. We work hard to take care of our children, to contribute to our community and, yes, to help build this nation to be a better and brighter place where we all can feel free and comfortable. It is time to stop the oppression of immigrants and to work together to co-exist as a people.”*

For the reasons set forth here, Empire Justice Center strongly urges you to withdraw this proposed rule. It is grounded in stereotypes and falsehoods and would cause untold harm to immigrants and their families. Furthermore, there is no sound justification for the proposed changes; sadly, they only typify this administration’s hostility and – too often – cruelty towards people who aspire to live in safety and decent health and to be proud participants in the American Dream.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Don Friedman for further information (contact information below).

Sincerely,

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#### **BIBLIOGRAPHY**

A variety of sources were consulted in the writing of these comments. Some of the primary sources are listed below, as are a number of organizations whose websites provided information.

The Arc: For People with Intellectual and Developmental Disabilities, <https://www.thearc.org>

Coalition for Human Needs, <https://www.chn.org>

Disability Rights Education and Defense Fund, <https://dredf.org>

Fiscal Policy Institute - <http://fiscalpolicy.org/wp-content/uploads/2018/10/NY-Impact-of-Public-Charge.pdf>

Food Bank for New York City, <https://www.foodbanknyc.org/>

Food Research and Action Council, <http://frac.org>

Justice in Aging: Fighting Senior Poverty through Law, <http://www.justiceinaging.org>  
Kaiser Family Foundation, <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>.

New England Journal of Medicine, "A New Threat to Immigrants' Health — The Public-Charge Rule," Krista M. Perreira, Ph.D., Hirokazu Yoshikawa, Ph.D., and Jonathan Oberlander, Ph.D. <https://www.nejm.org/doi/full/10.1056/NEJMp1808020>, September 2018.

"A Portrait of Immigrants in New York State," Office of the New York State Comptroller, November 2018, [https://www.osc.state.ny.us/reports/immigration/immigration\\_2016.pdf](https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf)

Protecting Immigrant Families, <https://protectingimmigrantfamilies.org>