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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, Inadmissibility on Public Charge Grounds

Dear Ms. Deshombres,

Western Center on Law & Poverty submits these comments to the Notice of Proposed Rulemaking, DHC Docket No. USCIS-2010-0012, Inadmissibility on Public Charge Grounds. As California's oldest and largest legal services support center, we have over 50 years' experience fighting to reduce poverty in our state through the courts, the legislature, and by working with state and local agencies to ensure our laws are fair and justly implemented. We can speak directly to which federal and state policies serve to reduce poverty in our communities thus benefitting our state and country as a whole and which policies worsen poverty, penalize families struggling to make ends meet, and hurt us all.

The recent notice of rulemaking proposes sweeping and very harmful changes to the current public charge test – the test used to determine which immigrants are inadmissible when they seek to enter the country or adjust their status to that of permanent residents. The proposed regulations would punish immigrants, mostly those who are people of color, for any use of a broad swath of public benefits, including health, nutrition, and housing assistance, and further punish low-to-moderate income families solely for their lack of wealth. This would be a radical departure from current agency guidance that limits public charge determinations to those who are primarily dependent on cash benefits and long term care medical services, and even then, only after examining the totality of the circumstances.

Simply stated, laws and regulations that increase barriers to safe and affordable housing, food, and health care are not only harmful in the short run, they have been proven to have lasting detrimental effects throughout the lifetime of an individual and even on the next generation. In other words, harsh and punitive short term spending cuts generally backfire by decreasing the ability for individuals to support themselves and their families. People cannot go to or do their best at work or school when they are hungry or sick.

I. The existing public charge rule

Any examination of the existing public charge rule would be remiss without understanding the rule's origins. The original public charge statute was passed shortly after the Chinese Exclusion Act in a wave of anti-immigrant hysteria leveled at Chinese, Irish, and other immigrants deemed undesirable by virtue of their race and economic status. While Western Center rejects the xenophobic values inherent in the public charge statute, the current interpretation of the law, in place since the 1999 INS guidance on public charge, has sought to strike a balance between the intent of the statute and preventing further harm to those subject to the rule and the larger community.

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 interpreting public charge. After 1996, immigrants' use of public assistance programs declined significantly due to confusion about how the public charge test might be used against immigrants who were eligible for, and receiving certain non-cash benefits.

In response to concerns that some consular officials and employees of the then Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued an administrative guidance in 1999 which remains in effect today. The 1999 guidance clarifies 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.¹ 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. The 1999 field guidance preamble makes clear that it was not seen as changing policy from previous practice, but was issued in response to the need for a clear and uniform standards so that immigrants can make informed decisions and providers and other interested parties can provide "reliable guidance."

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

¹ "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds" 64 FR 28689.

II. Comments to the proposed regulations

A. The proposed regulations will have a chilling effect that extends well beyond the targeted populations.

Although the public charge test is only relevant when an immigrant seeks to adjust to permanent residency status or enter the country on a visa or after an extended absence, immigrants not in those situations are also impacted. Many immigrants hold out hope that they will have a path to permanent residency in the future whether due to a change in family or job circumstance or due to a change in public policy. In other words, just because someone is not eligible for permanent residency now does not mean they will not have such an opportunity in the future. Similarly, immigrants who are currently permanent residents may be subject to the public charge rule again if they need to leave the United States for an extended period of time. Given the fact that this proposed rule would make it more difficult for immigrants (and citizens) to bring their family members to join them, many immigrants will need to consider what they would do should a family member out of the country fall ill and need care. This means virtually all green card holders could live in worry of being subjected to the rule again, regardless of how long they have resided in the United States or how much they have contributed to the economy should they have to leave the country to care for a family member who cannot join them here. This will needlessly keep family members separate and create economic hardship.

Draft leaks of the rule have already caused a chilling effect due both to fear among those directly impacted and due to misinformation that spreads throughout communities where fear of immigration consequences is already heightened.² This fear has even taken hold of individuals specifically exempt from the public charge rule, such as refugees. Studies of disenrollment due to the passage of the Personal Responsibility

² See, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," *Migration Policy Institute*, (June 2018), https://www.immigrationresearch.info/system/files/Chilling_Effects_Public_Charge_Rule.pdf and "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," *The Henry J Kaiser Family Foundation*, (December 2017), <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>; "Trump's Anti-Immigrant Policies Are Scaring Eligible Families Away From the Safety Net", Annie Lowrey, *The Atlantic* (Mar. 24, 2017), <https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/>; "Los Angeles Health Clinic 'A Microcosm' of the Nation's Anxieties", Rebecca Plevin, *National Public Radio* (Mar. 25, 2017), <http://www.npr.org/sections/health-shots/2017/03/25/520813613/los-angeles-health-clinic-a-microcosm-of-the-nations-anxieties>; "Deportation Fears Prompt Immigrants to Cancel Food Stamps", Pam Fessler, *National Public Radio*, (Mar. 28, 2017), <http://www.npr.org/sections/thesalt/2017/03/28/521823480/deportation-fears-prompt-immigrants-to-cancel-food-stamps>; "Immigrants are going hungry so Trump won't deport them", Caitlin Dewey, *Washington Post*, (Mar. 16, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/03/16/immigrants-are-now-canceling-their-food-stamps-for-fear-that-trump-will-deport-them/>; "Administration Actions Against Immigrant Families Harming Children Through Increased Fear, Loss of Needed Assistance", Danilo Trisi & Guillermo Herrera, *Center on Budget & Policy Priorities* (2018), https://www.cbpp.org/research/poverty-and-inequality/administration-actions-against-immigrant-families-harming-children#_ednref12 (noting how immigrants' fear of government causes chilling effects).

and Work Opportunity Reconciliation Act of 1996 (PRWORA), which contained several provisions restricting immigrant access to benefits, showed immigrant disenrollment from public benefits ranged from 15%-35% for all non-citizen immigrants and mixed-family children, and up to 60% for refugees.³

Finally, since many immigrants live in mixed-status families, the overall impact of this rule is even greater because families are dynamic—harms to one family member harm the entire family. In California, for example, immigrants make up 27% of the population.⁴ Half of California's children have at least one immigrant parent.⁵ Even among U.S. citizen children, 26% of them have at least one parent who is an immigrant.⁶ The proposed rule fails to consider its negative impact on an affected family as a whole.

B. The proposed regulations dramatically expand the definition of public charge beyond what Congress intended. (8 C.F.R. 212.21(a))

The current public charge test considers whether an applicant is likely to become primarily dependent on the government for subsistence. However, this rule must also be interpreted in line with the other changes to immigration law that happened at the same time. Congress purposefully rejected a number of amendments to public charge provisions that would have excluded, denied status adjustments to, or deported large segments of the U.S. immigrant population.⁷ Instead, Congress directly addressed concerns it had regarding immigrant receipt of benefits by denying access to a range of benefits for an immigrant's first five years in the U.S. and by enacting broader deeming rules.⁸ Congress also took steps to ensure that the government would not be held responsible for an immigrant's receipt of even a small number of benefits by mandating an affidavit of support for some immigrants. By enacting a 5-year bar and sponsor affidavits indicates that the scope of its inquiry into whether someone would ever become a public charge was finite as well. Once the five years has passed and a sponsor affidavit has expired, the query is no longer appropriate. Furthermore, as will be discussed below, Congress also gave states the option of paying for services that were not federally reimbursed, indicating that its query as to whether someone is primarily dependent on public benefits is finite.

³ "Trends in noncitizens' and citizens' use of public benefits following welfare reform, 1994-97", Fix, M., & Passel, J. *Urban Institute*, (1999); "The scope and impact of welfare reform's immigrant provisions", Fix, M., & Passel, J., *Urban Institute* (2002); "The unintended impact of welfare reform on the Medicaid enrollment of eligible immigrants", *Health ServRes*, 39(5),1509-1526, Kandula, N. R., Grogan, C. M., Rathouz, P. J., & Lauderdale, D. S. (2004).

⁴ "How Proposed Changes to the "Public Charge" Rule Will Affect Health, Hunger and the Economy in California", *UCLA Center for Health Policy Research*, November 7, 2018,

<https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>

⁵ Hans Johnson and Sergio Sanchez, *Public Policy Institute of CA*, May 2018,

<http://www.ppic.org/publication/immigrants-in-california/>

⁶ *Id.*

⁷ See, e.g. H.R. 2202 §532, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (referring to deportation); S. 1664, § 202, Immigration Control and Financial Responsibility Act of 1996 (referring to deportation); S. 1923, § 501, Immigration Stabilization Act of 1994 (referring to exclusion and adjustment of status).

⁸ 8 U.S.C. §§ 1611, 1612, 1613, 1631.

The proposed rule expands this definition to an immigrant who “receives one or more public benefit.” The rule then goes on to list a number of means-tested benefits. However, Congress never intended all means-tested benefits to be included in a public charge test. The most recent wildfires and hurricanes illustrate just how quickly an individual can go from not primarily dependent on the government for subsistence to needing several forms of government aid. Virtually all who live in American society rely at some point on the government for access to a number of benefits, whether it be aid in rebuilding after a disaster, education, access to collective services such as roads, public safety and fire protection, or access to publicly subsidized buildings. Reinterpreting the public charge rule so broadly will only serve to further isolate immigrant communities from integration into health, education, and employment settings.

C. The proposed regulations should not be expanded to include health programs.

1. The inclusion of Medicaid threatens the health and well-being of millions, destabilizes the health care system, interferes with states’ rights, and is contrary to Congressional intent. (8 C.F.R. 212.21(b)(2)(i))

a. Individuals affected

The UCLA Center for Health Policy Research conservatively projects that if the proposed rule is passed, over 2.1 million people will disenroll from Medi-Cal, California’s Medicaid & CHIP program.⁹ Over 1.4 million of these are children. Another study focused on the 1.3 million children in need of medical attention on Medi-Cal, meaning children with current or recent medical diagnoses, disabilities, or need for specific medical care.¹⁰ This study found that up to 455,000 of these children could be disenrolled from Medi-Cal, including as many as 93,000 children with a potentially life-threatening medical condition and up to 56,000 newborns. It takes little to foresee how such widespread loss of coverage could lead to poor health outcomes and even death for many of the disenrolled.

Beyond the immediate threats to health and life, studies have shown that children enrolled in Medicaid reap lifelong benefits. Children who are covered by Medicaid in utero have lower rates of obesity and related diseases later in life.¹¹ Studies also find that early life Medicaid exposure reduces later life hospitalizations and reduces the

⁹ “How Proposed Changes to the “Public Charge” Rule Will Affect Health, Hunger and the Economy in California”, *UCLA Center for Health Policy Research*, November 7, 2018,

<https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>

¹⁰ “Public Charge Rule Could Prompt Up to 455,000 California Kids Who Need Care to Leave Medi-Cal”, Leah Zallman, Karen Finnegan, *Institute for Community Health*, November 15, 2018,

<https://www.chcf.org/blog/public-charge-rule-prompt-thousands-kids-need-care-leave-medi-cal/>. See Attachment 18.

¹¹ “The Intergenerational Transmission of Poverty and the Long Reach of Child Health and Nutrition Programs”, Marianne Page, *University of California Center Sacramento Bacon Public Lectureship and White Paper*, March 2017, http://uccs.ucdavis.edu/events/event-files-and-images/BaconWhitePaper_2.23.17.pdf. See Attachment 2.

likelihood of having a chronic health condition in adulthood.¹² In fact, according to Dr. Marianne Page, the Deputy Director of the Center for Poverty Research at University of California Davis, “there is a rapidly growing body of evidence that early life access to Medicaid improves later life health across a number of dimensions. These improvements are likely to reduce future health expenditures. They may also translate into improved earnings potential, which could reduce welfare participation and increase tax revenues.”¹³

Medicaid is not just an effective antipoverty program for children. The Journal of Health Economics published a study that measured Medicaid’s anti-poverty effects by calculating the average drop in out-of-pocket medical expenses for those receiving Medicaid. The study found that Medicaid kept 2.1 million Americans out of poverty and 1.4 million Americans out of extreme poverty in 2010.¹⁴ Further analysis of subgroups revealed that the greatest positive effects were found for ethnic minorities and women.¹⁵ Enrolling in Medicaid enables low-wage workers to find and retain employment,¹⁶ decrease reliance on cash assistance,¹⁷ save more and contribute more to the local economy,¹⁸ address previously unmet medical needs,¹⁹ timely pay bills,²⁰ purchase better quality food and housing,²¹ access credit and reduce debt,²² and achieve financial stability.²³

¹² *Id.*

¹³ *Id.*

¹⁴ “The poverty-reducing effect of Medicaid”, Benjamin D. Sommers, Donald Oellerich, *Journal of Health Economics*, September 2013, <https://doi.org/10.1016/j.jhealeco.2013.06.005>.

¹⁵ *Id.*

¹⁶ “The Relationship Between Work and Health: Findings from a Literature Review, Larisa Antonisse and Rachel Garfield”, *Kaiser Family Foundation*, <https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/>.

¹⁷ “Medicaid Expansion And State Trends In Supplemental Security Income Program Participation”, Aparna Soni et. al., *Health Affairs*, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.1632>; “IRP Discussion Paper: The Effect of Expanding Medicaid Eligibility on Supplemental Security Income Program Participation”, Marguerite Burns & Laura Dague, <https://www.irp.wisc.edu/publications/dps/pdfs/dp143016.pdf>;

¹⁸ “Medicaid Is A Smart Investment in Children”, Karina Wagerman et. al., *Georgetown Center for Children & Families*, <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>.

¹⁹ “Implications of the ACA Medicaid Expansion: A Look at the Data and Evidence”, Robin Rudowitz and Larisa Antonisse, http://nasuad.org/sites/nasuad/files/KFF_Implications-of-the-ACA-Medicaid-Expansion_May-2018.pdf; “The effect of the affordable care act Medicaid expansions on financial wellbeing”, Loujia Hu et. al., <https://www.sciencedirect.com/science/article/abs/pii/S0047272718300707>; “Health Insurance Coverage and Health — What the Recent Evidence Tells Us”, Benjamin D. Sommers et. al., <https://www.nejm.org/doi/10.1056/NEJMs1706645>.

²⁰ *Id.*

²¹ “Medicaid Is A Smart Investment in Children”, Karina Wagerman et. al., <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>.

²² http://nasuad.org/sites/nasuad/files/KFF_Implications-of-the-ACA-Medicaid-Expansion_May-2018.pdf. See also <http://journals.sagepub.com/doi/full/10.1177/1077558717725164>;

²³ <http://www.nber.org/papers/w25053>; “Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly” *The Ohio Department of Medicaid*, (January 2017), <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>;

Studies have shown that the majority of Medicaid recipients are working²⁴, but their work does not pay enough to purchase health coverage. DHS' contention that "by virtue of their employment, such immigrants should have adequate income and resources to support themselves without resorting to seeking public benefits" (8 FR 51123) demonstrates DHS' fundamental misunderstanding of today's labor market, the persistent wage and benefits gaps among lower-income workers, and the positive role that public benefits have in society by addressing these gaps. Furthermore, low-wage jobs comprise a growing share of the U.S. workforce: almost one-third of all workers earn under \$12 per hour, and over half of these workers are women.²⁵ People of color are also disproportionately concentrated in low-wage jobs.²⁶

Substantial research supports the efficacy of the Medicaid program in achieving its purpose of enabling beneficiaries to attain and retain self-sufficiency and better health by providing coverage for and access to health care services. Numerous studies have shown that sharp declines in rates of uninsurance among the low-income population are due to wider availability of Medicaid coverage.²⁷ This is especially true for various subpopulations with higher health needs.²⁸ Clearly, a regulation designed to screen out those who would become primarily dependent on government programs should not dissuade people from enrolling in programs effective at keeping them out of poverty and better able to work.

b. Effects on California's health care system and economy

The Affordable Care Act dramatically increased the number of insured in California which in turn improved the financial stability of hospitals and clinics. In this new climate, other sources of funding, such as Medicaid's Disproportionate Share Hospital funding was also reduced and that funding would need to be replaced should we return to an environment with large numbers of uninsured people with more complicated medical conditions due to delays in accessing care and no way to pay for their care. Just as before the ACA, those who are eligible for Medi-Cal but have no coverage will delay care until their condition has deteriorated to a less treatable stage. Furthermore, regardless of the fact that the proposed rule excludes emergency services, those who fear a public charge determination may refuse to consent to apply for Medi-Cal, even in emergency situations given confusion or uncertainty about the new, broader totality of the circumstances test. The draft I-944 form outlined on FR 51211 has no designation that the receipt of public benefit was only for an emergency and does not indicate that

²⁴ Kaiser Family Foundation Issue Brief *Understanding the Intersection of Medicaid and Work*, <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>. See Attachment 13.

²⁵ "Few Rewards: An Agenda to Give America's Working Poor a Raise", *Economic Policy Institute and Oxfam America*, 2016, https://www.oxfamamerica.org/static/media/files/Few_Rewards_Report_2016_web.pdf.

²⁶ *Id.*

²⁷ "The Relationship Between Work and Health: Findings from a Literature Review", [Larisa Antonisse and Rachel Garfield](https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/), <https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/>

²⁸ *Id.*

such services would be excluded. The form merely asks about application or receipt of services, with no room or field allowing an explanation of the situation nor any indication that inability to pay for a medical emergency is not part of the totality of the circumstances test.

As discussed above, studies predict that over 2.1 million Medi-Cal enrollees will disenroll should the proposed regulation be implemented. That loss of enrollment translates to a loss of \$509 million to-\$1.187 billion federal dollars to California. While a reduction in federal spending is often viewed as a positive, reducing federal healthcare expenditures so drastically in California would lead to a loss of 13,200 jobs due to reduced federal support for Medi-Cal. The majority of these jobs losses would be in health care, including hospitals, doctors' offices, labs, outpatient/ambulatory care centers, nursing homes, dental offices, other health care settings and insurers. Other industries affected would include food-related industries and real estate related industries.²⁹

c. Congressional intent

In 2009, when Congress reauthorized the Children's Health Insurance Program, Congress gave states a new state plan amendment option to cover, with regular federal matching dollars, lawfully residing children and pregnant women on Medicaid and CHIP during their first five years in the U.S.³⁰ This option remained in place even after the most recent CHIP reauthorization in 2018 that made the program permanent. Additionally, lawful permanent residents who have been in the United States for more than 5 years have always been able to enroll in Medicaid, even after Congress's passage in 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Yet lawful permanent residents who need to leave the country for more than 180 days could risk losing their green card status if they enroll in Medicaid. Penalizing these same immigrants for using Medicaid or CHIP when Congress has already expressly authorized states to offer these benefits and has appropriated money to pay for these benefits is an overreach of the Department's regulatory authority.

d. California's goals of universal coverage

California has demonstrated its commitment to universal coverage by taking advantage of nearly every coverage option available through the federal Medicaid program. Specifically, the state expanded Medicaid to the childless adult population, took the federal option to cover recent immigrants available through CHIP reauthorization, and established its own healthcare Exchange in accordance with the Affordable Care Act. Having now fully implemented the Affordable Care Act and other efforts to cover

²⁹ *How Proposed Changes to the "Public Charge" Rule Will Affect Health, Hunger and the Economy in California*, UCLA Center for Health Policy Research, November 7, 2018, <https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>

³⁰ Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA)

immigrant children in California, California reduced its rate of uninsured from 17% in 2013 to 7%.³¹ Universal coverage is now within reach in this state.

As recently as this summer, the California Legislature declared its intent to move to universal health care with the passage of AB 1810 as part of the annual budget process.³² AB 1810 was also signed by the governor. AB 1810 creates the Council on Health Care Delivery Systems and states in its preamble “It is the intent of the Legislature that all Californians receive high-quality health care, with positive health care outcomes, regardless of age, income, race, ethnicity, immigration status, gender or gender nonconforming status, sexual orientation, geographic location, health status, or ability.” The preamble continues, “It is the intent of the Legislature that all Californians have access to affordable health coverage, including health coverage with reasonable out-of-pocket costs relative to household income, or being eligible for appropriate cost-sharing assistance.”³³ The overreach and the widespread chilling effect of the proposed public charge rule frustrates California’s important goal of universal health coverage.

Additionally, California has structured its Medicaid program under the presumption that even healthy people will choose to remain enrolled. The proposed rule does allow for the use of up to 12 months of Medicaid during a 3-year look back period (assuming there are no other negative factors such as other public benefit use). If faced with this rule, a person looking to avoid a public charge determination (whether or not it would ever be applied), would understandably only enroll in Medi-Cal when services were needed and would disenroll when not needed. Were Medi-Cal still a claims-based system where providers received payment on a fee-for-service basis, as long as those affected were able to re-enroll quickly enough to get care when needed this would not disrupt the Medi-Cal program itself. However, California has largely reorganized its Medi-Cal system based on capitated payments to health plans. The capitated rates are based on assumptions of the health of the population and that not everyone will be receiving care at all times. Once large numbers start disenrolling when care is not needed, the capitated rates become meaningless and rates must be renegotiated knowing that some beneficiaries will only be enrolled while receiving care. The proposed regulation would cause disruption in the rate-setting process and the Medi-Cal program as a whole, not to mention the harm to individuals who may forgo all but the most drastically needed care.

³¹ “Health Insurance Coverage Type,” State Health Access Data Assistance Center (SHADAC), n.d., <http://statehealthcompare.shadac.org/trend/11/health-insurance-coverage-type-by-total#0/6/10/6,7,8,15/21>.

³² A.B. 1810 (Committee on Budget, Health), Statutes of 2018. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1810

³³ *Id.* CA Health & Safety Code 1000(e)&(f).

2. Exclusions for Emergency Medicaid, IDEA services, and benefits to foreign-born children of U.S. Citizens are insufficient to safeguard individual and community health. (8 C.F.R. 212.21(b)(2)(i)(B)-(E))

While we support these exclusions from the scope of the proposed rule since we oppose adding any benefit programs to the existing rule, immigrants will still forego these services due to the rule's chilling effects on all public benefit programs. The system imposed by the proposed rule creates a dangerous paradox for immigrants who are sick or injured. Without a doctor, immigrants will not know if the condition for which they need treatment counts as an "emergency medical condition" subject to the exclusion. Similarly, immigrants who seek emergency care, may not be well enough to leave the hospital once the medical emergency has subsided but while still receiving treatment necessary to avoid another emergency. Additionally, individuals receiving IDEA services in schools are also Medicaid enrollees. Without enrolling in Medicaid, the child could not receive the IDEA services. The school, however, would still be required to provide the services, with or without the Medicaid funding. In other words, these exclusions on their own will not prevent hospitals and schools from losing necessary federal funding and only serve to illustrate why Medicaid should not be included at all in a public charge determination.

3. Medicare Part D premium and cost-sharing subsidies should not be included in a public charge consideration. 8 C.F.R. 212.21(b)(2)(iii)

Just as Medicaid has no place in a public charge determination, neither does assistance for Medicare Part D. Given the uncontrolled rise in prescription drug costs in the last decade, few Americans could pay out of pocket for the prescriptions drugs required to treat many chronic and serious conditions. Most Americans currently receive assistance in paying for prescription drugs whether through a government program or employer-sponsored insurance.

D. The proposed rule should not be expanded to include SNAP.

1. Suppressed participation among persons eligible for SNAP

If the draft rule is finalized, it will increase hunger by discouraging participation among people who are eligible for the Supplemental Nutrition Assistance Program (SNAP).³⁴ DHS claims that the "chilling effect" of this rule would not be comparable to that of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) because PRWORA changed eligibility requirements, whereas this rule would change enrollment incentives.³⁵ However, DHS does not explain why refugees' Food Stamp use

³⁴ A description of SNAP found at: <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap>

³⁵ NPRM at 51266.

dropped 60 percent between 1994 and 1997, despite their eligibility remaining unchanged by PRWORA.³⁶

If DHS were to calculate the costs and consequences of the proposed rule using a more accurate projected rate of disenrollment, the impacts on public health and the economy would be significantly greater than the estimated 2.5 percent. Approximately 25.9 million people or an estimated 8 percent of the U.S. population would be potentially chilled by the proposed rule for. This number represents individuals and family members with at least one non-citizen in the household and who live in households that are income-eligible to receive the programs included in this proposal. Of this population, approximately 9.2 million are children under 18 years old, or approximately 13 percent of our nation's child population.³⁷

According to Current Population Survey (CPS) data, nearly 90 percent of these children are U.S. citizens. People of color represent 90 percent of the potentially chilled population. An estimated 70 percent are Latino, 12 percent are Asian American and Pacific Islander, and 7 percent are Black people.³⁸ Based on disenrollment rates observed post-PRWORA, The Migration Policy Institute estimates that anywhere between 5.4 and 16.2 million immigrants would disenroll from these programs if the proposed rule were enacted.³⁹ In California, nearly 3 million immigrants and their children could be impacted by these changes. If the proposed rule is finalized, UCLA Center for Health Policy Research estimates that between 129,000 and 301,000 people would disenroll from CalFresh. This research is reinforced by the finding that, following PROWRA, immigrants' loss of eligibility reduced participation in the Food Stamp Program among U.S.-born citizen children of immigrants by 50%, and reduced the average benefits they received by 36%.⁴⁰ Disenrollment of this scale would trigger an economic ripple effect capable of devastating local economies across the U.S.⁴¹

³⁶ United States Department of Agriculture Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation. (1999) Who is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1997, <https://fns-prod.azureedge.net/sites/default/files/cdr.pdf>.

³⁷ 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

³⁸ 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

³⁹ Batalova, Jeanne, et al. (2018). Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use. Migration Policy Institute. <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

⁴⁰ Chloe N. East of the University of Colorado Denver examines how parental eligibility for the Food Stamp Program affects children's well-being and healthcare expenses, with a particular focus on U.S.-born children of immigrants. <https://ucdavis.us4.list-manage.com/track/click?u=6b32e15814320f77b603fdcc5&id=72191a3ad1&e=0f769ec686>

⁴¹ Ninez Ponce, Laurel Lucia and Tia Shimada (2018). How Proposed Changes to the 'Public Charge' Rule

2. The short and long-term harms of food insecurity and hunger

Food insecurity and hunger is a significant issue threatening the health, wellbeing and future opportunities of Americans of all ages from urban and rural communities alike. USDA's Economic Research Service reports that 42 million individuals nationwide—13 million of them children—experience food insecurity, including 12.8 percent of Californians.⁴² Many of these people turn to government and private programs to prevent or reduce the incidences of hunger and most only receive assistance for a brief period of time.

While this high incidence of hunger is disgraceful, it would be far worse were it not for the nation's profoundly successful and cost-effective SNAP, known as CalFresh in California.⁴³ SNAP is our country's most important defense against hunger. Benefit allotments are calculated based on household income, resources, expenses and size using the United States Department of Agriculture's (USDA) Thrifty Food Plan (TFP) to determine food costs based on family size. The maximum monthly allotment in Federal Fiscal Year 2017-18 is \$192 for a single person and \$640 for a family of four. Nationally, only 41 percent of households receive the maximum allotment and 23 percent of household receive less than half of the maximum allotment. In all cases, SNAP benefits are only expected to supplement the food budgets of participating households, that is, SNAP recipients are expected to use other income or other food assistance to make up the difference in their food budget.

In California, the average person receives \$138 in CalFresh benefits and the average household of three (3) receives \$287 a month. That is equal to \$1.15 a meal for one person and \$2.40 a meal for three (3) persons. According to research by the Institute of Medicine (IOM), SNAP recipients are less likely to be food insecure than eligible non-recipients; in other words, the program meets the central goal of alleviating hunger. Controlling for other factors, research has also shown that SNAP participants are not more likely than eligible non-participants to be overweight or obese and that the program does not contribute to the current obesity crisis in the U.S. In fact, by both improving dietary intake and reducing food insecurity, participation in federal nutrition programs plays a critical role in obesity prevention. For this reason, increasing participation in the CalFresh, is a childhood obesity prevention strategy recommended by the IOM and the White House Task Force on Childhood Obesity.

As important as the SNAP benefit is, it is not a panacea. It offers less than \$2.00 per meal, an amount that is less than what has been determined is needed to attain a healthy diet. Because benefits are so low, nearly one-third of households receiving SNAP still must rely on food banks to meet their basic need for food. Many, who do not have

Will Affect Health, Hunger and the Economy in California. UCLA Center for Health Policy Research: <http://www.calhealthreport.org/2018/11/08/researchers-warn-public-charge-rule-changes-lead-hardship-economic-losses-california/>. See Attachment 20.

⁴² SNAP Participation data found at: <https://www.ers.usda.gov/media/8229/mapdata2015.xls>

⁴³ A description of the CalFresh program found at: <http://www.calfresh.ca.gov/>

access to a food bank or other support systems, experience food insecurity the last week of the month.

It is clear that immigrants would not be the only people impacted by disenrollment from SNAP caused by the rule, but also U.S. citizens. Research has shown that immigrants' loss of eligibility reduced participation in the Food Stamp Program among U.S.-born (aka citizen) children of immigrants by 50%, and reduced the average benefits they received by 36%.⁴⁴ This loss of parental Food Stamp eligibility before age five has clear negative effects on developmental health outcomes.⁴⁵ And if the human impact of reduced SNAP use among families with eligible children isn't enough to concern policy makers, usually out-year costs to government safety net programs as a result of failure to provide necessary services is or should be. In this case, research has shown that Food Stamp access in early life reduces medical expenditures in the medium-run by roughly \$140 per child.⁴⁶

If enacted, the public charge rule would make hunger worse in America, among individuals impacted by the rule, among people who reside with any member impacted immigrants, and among people who reside within communities where impacted immigrants reside. These new barriers for participation among otherwise eligible people would discourage receipt of vital food assistance for Californians who live in every corner of our state⁴⁷ and who are valued members of our communities. What's more, we could expect that there would be an increased burden for county eligibility workers to answer questions people have about public charge and, at least in the short term, respond to requests from impacted SNAP recipients who, out of fear that they will be separated from their home and family by the public charge rule, request disenrollment in the program should the rule be published as final.

3. SNAP enjoys bipartisan support and Congress has rejected efforts to reduce its reach.

Just this week, Congress passed a reauthorization of SNAP rejecting the over \$20 billion in cuts proposed in House Resolution 2, the 2018 Farm Bill.⁴⁸ While the draft federal regulations reference the legislative intent PRWORA⁴⁹ to limit federal aid to certain categories of people who are immigrants, the administration failed to consider the legislative intent of Congress, including the 118th Congress, during the past four Farm

⁴⁴ Chloe N. East of the University of Colorado Denver examines how parental eligibility for the Food Stamp Program affects children's well-being and healthcare expenses, with a particular focus on U.S.-born children of immigrants. Dr. East's policy brief can be found here: <https://ucdavis.us4.list-manage.com/track/click?u=6b32e15814320f77b603fdcc5&id=72191a3ad1&e=0f769ec686>. See Attachment 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Demographics of SNAP participations by Congressional district:

<http://calbudgetcenter.org/resources/calfresh-reduces-hunger-every-congressional-district-california-face-deep-federal-cuts/> See Attachment 3.

⁴⁸ Text of H.R. 2 found at:

https://agriculture.house.gov/uploadedfiles/agriculture_and_nutrition_act_of_2018.pdf

⁴⁹ Public Law 104-193: <http://www.gpo.gov/fdsys/pkg/PLAW-104publ193/html/PLAW-104publ193.htm>

Bill deliberations in which zero proposals to further limit SNAP aid in any way to this population of immigrants were heard or even included in any of the committee bills. In fact, during the Congressional debate of the 2018 Farm Bill, both the Senate and the House articulated bipartisan support for the program and the proposals to reduce SNAP were largely rejected. Paradoxically, the draft public charge rule acknowledges that citizen children of SNAP eligible immigrants will also be harmed by the rule's expected suppression of SNAP participation due to fears that it will impact one's path towards permanent status. If Congress intended to limit the food help received by citizen children of immigrant families, it could have done so in any of the Farm Bills that have been passed over the past two decades since the passage of PRWORA. The fact that such a proposal has never been introduced as part of a Congressional Farm Bill should be no surprise because there is no evidence that limiting access to anti-hunger programs to low-income children is a policy intervention that has any positive outcomes whatsoever. Neither the political will, nor even the political interest, in reducing SNAP participation among eligible, low-income children of immigrant parents exists, yet the Administration acknowledges that this will be one of the outcomes expected by the public charge rule if implemented. The draft rule does not consider that this expected and harmful outcome is inconsistent with decades of bipartisan law-making in SNAP.

4. Public charge rule will undermine work and lengthen time families live in poverty.

The large majority of SNAP recipients who can work do work. Nationally, while it is true that people often receive hunger-fighting food help from SNAP when they are between jobs rather than endure hunger, it is also true that SNAP recipients have high work rates and that over 80 percent of SNAP households work in the year before or the year after receiving SNAP. Work rates are even higher for families with children: more than 60 percent work while receiving SNAP, and almost 90 percent work in the prior or subsequent year. These facts are often left out or ignored by those seeking to make cuts to or discourage participation in the program and are frequently replaced by inflammatory political rhetoric undergirded by inaccurate, and often racist and misogynistic stereotypes about who is working and who is not. The proposed public charge rule is cut from the same cloth of misinformation about the contributions of low-income immigrants and the reality that the support they receive from SNAP and other safety net programs is usually short-lived.

Though two million jobs have been created in the state since the recession, these jobs tend not to pay a living wage and Californians who are working also struggle with lack of job security, underemployment and low-wages. This is a reality that plays out across the country, especially in states that do not require employers to pay higher than the federal minimum wage of \$7.50, which hasn't been raised for decades and has not kept pace with either inflation or the wages of company managers, owners and non-working shareholders. With nearly 80 percent of poor Californians having earnings from work,⁵⁰

⁵⁰ According to the Public Policy Institute of California.
http://www.ppic.org/main/publication_show.asp?i=261 See Attachment 17.

many experience hunger or are forced to rely on programs in the social public safety net.

If the draft public charge rule's impact was limited to its negative and be harmful enough. But that isn't all. We expect the public charge rule would also undermine work readiness among immigrant Americans. For low-income Americans, both those who work and those who do not or cannot, SNAP offers an essential support, preventing hunger and malnutrition. For people looking for work, this access to food is essential, as hunger can easily undermine employment goals. But that's not all. For many SNAP recipients, receipt of hunger-fighting food benefits makes them eligible for the SNAP Employment and Training (E&T)⁵¹ program. SNAP E&T can help recipients reduce barriers to work, find employment and even provides post-employment services to help workers be successful in a new job. Most importantly, SNAP E&T helps people exit poverty. This is why there was strong bi-partisan support for SNAP E&T in the 2014 Farm Bill which lead to the establishment of a Center of Excellence for SNAP E&T, known as SNAP to Skills. The work of SNAP to Skills has been essential in the development of California's SNAP E&T program to help support SNAP recipients to seek employment skills, transition into work or prepare to advance in their chosen field. As a direct result of this federal support, thirty-three of California's County Human Services Agencies currently participate in SNAP E&T Program.⁵² Buoyed by this increase in county participation and recent federal funding supporting pilot programs like that offered by the Fresno Bridge Academy in Fresno, SNAP E&T Programs are finding success in helping families secure employment that allows them to leave the safety net altogether. These initial outcomes indicate that SNAP E&T serves as a powerful poverty interrupter. The draft public charge rule fails to acknowledge the impact of discouraging participation in SNAP, and thus disrupting their access to SNAP E&T, which in turn lengthens the time spent in poverty. This undermines the work readiness of people in our workforce at a time when Chambers of Commerce and industry partners say that they lack employees who are prepared for work.

SNAP also strengthens communities and retailers who depend on shoppers paying with SNAP when their income falls short. In fact, every \$1 billion in SNAP benefits redeemed generates \$97 million in farm cash receipts, which translates into 950 farm jobs and \$32 million of income to farmers and hired farmworkers⁵³ and an increase of 8,900 to 17,900 full-time equivalent jobs⁵⁴ in the general economy. In California, SNAP provided

⁵¹ A description of SNAP E&T program found at: <https://www.fns.usda.gov/snap/federal-jobs-training-programs>

⁵² Effective with the December 2016 quarter, PC 364 CFET Third Party Match is available for claiming third party reimbursements to the CFET 50 percent allocation. Counties may utilize this code separately and/or concurrently with the PC 464 (CFET Administrative Activities). Please see CFL NO. 16/17-44 for additional information.

⁵³ <https://www.ers.usda.gov/amber-waves/2006/september/food-stamp-program-boosts-farm-income-and-jobs/>

⁵⁴ <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/>

\$6.5 billion in food benefits last year,⁵⁵ resulting in \$11.7 billion in total economic activity and more than 65,000 jobs statewide.⁵⁶ Discouraging participation in SNAP will result in fewer jobs, especially in communities like those throughout California that rely on farming and food production industries. The draft public charge rules do not consider what the impact discouraging participation in SNAP will have on food-chain jobs.

Without support to prevent hunger or to improve their skills, low-income families will languish in poverty regardless of how hard they work. The draft public charge rule doesn't propose a fix to this well documented cause of poverty and government program dependence. Instead it would discourage participation in SNAP, and by doing so, would reduce employability and result in job loss in the food-system economy.

5. Harm of childhood hunger resulting from the public charge rule will be long lasting.

When children live in poverty with their basic needs unmet, they endure hardships that impair their ability to thrive⁵⁷ and their capacity to learn and develop as children and throughout their lifetime.⁵⁸ This deprivation has a short-term impact on educational success and classroom environments at schools with a high-density of very poor children. Over the long term, it reduces the strength and capacity of our future workforce.⁵⁹ Thus, un-ameliorated poverty increases the likelihood that childhood impairments will result in adult dependency on safety net services.⁶⁰ Children who live with chronic unmet basic needs, including hunger, are also deeply impacted by the toxic stress that results from the family's situation.⁶¹ One study found that growing up in a home with significant unmet basic needs could more negatively impacts a child's life chances than neonatal exposure to cocaine.⁶² Growing up with unmet basic needs not

⁵⁵ California Budget & Policy Center analysis of CA Dept. of Social Services Benefit Issuance Data for CAFY17-18.

⁵⁶ *Id.*

⁵⁷ "Family Poverty, Welfare Reform, and Child Development." Greg J. Duncan and Jeanne Brooks-Gunn Source: *Child Development*, Vol. 71, No. 1 (Jan. - Feb., 2000), pp. 188-196. <http://www.jstor.org/stable/1132232>

⁵⁸ Duncan, G and Magnuson, K. 2011. The Long Reach of Childhood Poverty. http://www.stanford.edu/group/scspi/media/pdf/pathways/winter_2011/PathwaysWinter11_Duncan.pdf. See Attachment 19.

⁵⁹ *Id.*; Cuddy, E., Venator, J. and Reeves, R. 2015. In a land of dollars: Deep poverty and its consequences. Brookings Institution. <https://www.brookings.edu/research/in-a-land-of-dollars-deep-poverty-and-its-consequences>. See Attachment 11.

⁶⁰ Barton, Paul E, and Richard J Coley. *The Family: America's Smallest School*. Policy Information Report, Princeton: Educational Testing Service, 2007, and Berliner, David C. *Poverty and Potential: Out-of-School Factors and School Success*. Boulder and Tempe: Education and the Public Interest Center & Education Policy Research Unit, 2009.

⁶¹ Evans, G. W. and English, K. 2002. The Environment of Poverty: Multiple Stressor Exposure, Psychophysiological Stress, and Socioemotional Adjustment. *Child Development*, 73: 1238-1248. doi: 10.1111/1467-8624.00469

⁶² Susan Fitzgerald, "'Crack baby' study ends with unexpected but clear result" (Philadelphia Inquirer, July 21, 2013) http://www2.philly.com/philly/health/20130721_Crack_baby_study_ends_with_unexpected_but_clear_result.htm. See Attachment 8.

only impacts the physical health of a child, but also their mental health and future potential. This is, in part, because parents who are unable to adequately care for their children are more likely to experience maternal and/or parental depression,⁶³ a condition associated with reduced maternal-child interaction known to undermine school readiness among poor children.⁶⁴ The experience of childhood hunger will harm children's brain development and early functioning, disrupting their ability to succeed in school and in life.⁶⁵ These challenges have been documented to reduce the ability of children to cope during difficult situations, the very skill they will need most as a child living in poverty or a young adult trying to exit it. Ultimately, hunger damages a child's chance to escape poverty and fuels an intergenerational cycle of poverty.⁶⁶ The draft public charge rule does not consider the impact it would have on child brain development or on intergenerational poverty.

6. The public charge rule would undermine education and government investments.

The number of food banks springing up at university and college campuses is on the rise.⁶⁷ According to California State University (CSU), one in five CSU students experience hunger and one in ten experience homelessness.^{68 69 70} A survey recently conducted by the University of California Regents, found that one in five University of California (UC) students do not have access to adequate food or nutrition.⁷¹ Furthermore, nationwide lab reports show that half of all community college students are struggling with housing and/or food insecurity.⁷² These findings are consistent with

⁶³ <http://news.yale.edu/2013/07/29/no-money-diapers-depressing-reality-poor-mothers>

⁶⁴ Tracy Vericker, et al. "Infants of Depressed Mothers Living in Poverty: Opportunities to Identify and Serve" (The Urban Institute, August 2010), <http://www.urban.org/UploadedPDF/412199-infants-of-depressed.pdf> See Attachment 12.

⁶⁵ Harvard University Center on the Developing Child. Toxic Stress Derails Healthy Development. <https://developingchild.harvard.edu/resources/toxic-stress-derails-healthy-development/>

⁶⁶ Robert L. Wagmiller, Jr., and Robert M. Adelman, Childhood and Intergenerational Poverty: The Long Term Consequences of Growing Up Poor (Nat'l Ctr. for Children In Poverty, Nov. 2009). See Attachment 7.

⁶⁷ "More College Students Battle Hunger As Education and Cost of Living Costs Rise," The Washington Post, April 9, 2014. http://www.washingtonpost.com/local/more-college-students-battle-hunger-as-education-and-living-costs-rise/2014/04/09/60208db6-bb63-11e3-9a05-c739f29ccb08_story.html See Attachment 15.

⁶⁸ Source: <http://www.latimes.com/local/lanow/la-me-cal-state-homelessness-20160620-snap-story.html>

⁶⁹ Serving Displaced and Food Insecure Students in the CSU (Feb 2016): <https://presspage-production-content.s3.amazonaws.com/uploads/1487/cohomelessstudy.pdf?10000>

⁷⁰ In Cal State universities, 42% of students are food insecure and 11% are homeless.

https://www2.calstate.edu/impact-of-the-csu/student-success/basic-needs-initiative/Documents/BasicNeedsStudy_phasel1_withAccessibilityComments.pdf

⁷¹ "Student Food Security and Access,"

<http://regents.universityofcalifornia.edu/regmeet/july16/e1attach.pdf> This report was made possible by funding from the University of California (UC) Office of the President Global Food Initiative. For more information about this initiative, visit: www.ucop.edu/global-food-initiative.

⁷² Sara Goldrick-Rab, et al. "Still Hungry and Homeless in College" 13 (Wisconsin HOPE Lab, April 2018), http://wihopelab.com/publications/Wisconsin_hope_lab_hungry_to_learn.pdf. See Attachment 21.

findings from other university research documenting a prevalence of hunger among college students, impeding graduation rates and learning.⁷³

One of the reasons that low-income students, like those identified in the studies referenced above, are experiencing hunger is that federal food help available to most low-income Californians has proven difficult for them to access. This is because federal SNAP Law denies eligibility to a student unless they are working 20 hours a week or more⁷⁴ or are eligible for one of the exemptions to the rule, including because they are parenting young children. California's SNAP administrators and University and College Chancellors have been partnering to reduce barriers to accessing SNAP and to preventing hunger on college campuses because they believe that doing so will prevent dropouts and protect investments that state and federal governments have made public education systems. Allowing government investment in education to undermine college completion rates is not a good public policy outcome. To the extent that some of the college students seeking their AA, career technical or higher degrees are impacted immigrants, undermining their access to SNAP by threatening them with a denial of a green card would make this effort more difficult. The draft public charge rule did not consider the impact of the college student completion rate and lost investments in education that would result from higher rates of incompleteness.

7. The draft public charge rule fails to consider impact on military readiness.

Too many military families and veterans depend on SNAP to make ends meet because their military pay is not enough to meet their basic needs. In FY13, current and former military members and their families redeemed approximately \$104 million in SNAP benefits at commissaries—a 300 percent increase since 2007. For military families who do not have base-housing and live in high-cost areas, like those in California, accessing SNAP can be complicated and this has led military families across the country to turn out of desperation to food pantries and food banks – many operating on base or nearby military installations – for emergency food assistance. In recent years the Department of Defense and the Department of Veterans Affairs have issued policies to address high rates of hunger among low-income military and veteran families. This is because military leaders understand that soldiers are less prepared to serve their country if they are hungry or worried about their families going hungry. They also know that when veterans are largely living in poverty with unmet basic needs, it is more difficult to convince young people who live in their communities to sign up. The failure of the draft public charge rule to consider the impact on military families is shortsighted and perilous.

⁷³ A University of Oregon conducted this year found that 59 percent of students at Western Oregon University had recently experienced food insecurity. The figure was 21 percent in a 2009 report on students at the University of Hawaii at Manoa.

⁷⁴ USDA granted a waiver to CDSS allowing them to use reasonably anticipated monthly average of work [\[ACL 12-37\]](#);

8. The draft public charge rule fails to consider impact on access to water.

Families throughout the country have been increasingly impacted by lack of access to potable water in their homes. The lead contamination crisis continues to be uncovered and, here in California, the long-years of drought have caused the highly farmed soil of our Central Valley to become contaminated. Pediatricians have advised that a diet with plentiful fresh fruits and vegetables is one of the best remedies to ameliorate the impacts of lead contamination in children because, “the co-existence of iron or calcium deficiencies may enhance the uptake of lead from the gastrointestinal tract.”⁷⁵ Unfortunately, poor children are most likely to test positive for lead contamination and least likely to live in families that can afford and have access to fresh fruits and vegetables. What’s more, homes with contaminated water not only lack the resources to purchase restorative food, but are also challenged to purchase clean water. It has been reported that a household in the Central Valley that lacks potable water in their home increases their grocery bill by as much as 7%, as water is needed not just for drinking but also for cooking and for cleaning kitchen ware. Without federal and state interventions to prevent lack of potable water from causing long-term harm to a growing number of people in America, access to resources like SNAP that can be used to purchase water and fruits and vegetables are essential. The draft public charge rule fails to its impact on communities that lack access to potable water in their homes.

9. There is no good public policy outcome to increased hunger.

SNAP not only helps protect low-income families in America against the demoralizing experience of hunger, the modest investments of this essential safety net program helps to prevents long-term negative health impacts which will be costly to our health systems in the long-run. It does all of this while also supporting the local food and agriculture economy. There is overwhelming evidence that preventing hunger leads to good public health, education, employment and economic outcomes; conversely there is no evidence of a single positive public policy outcome that comes from keeping anti-hunger help from families who need it.

E. The public charge rule should not include housing programs.

On a given night, over 100,000 Californians have no shelter to sleep in.⁷⁶ And 1.5 million households lack an affordable rental unit to call home.⁷⁷ California is grappling with a profound housing crisis. Each and every unit of housing is critical and subsidized housing plays a critical role in alleviating the crisis. The proposed rule expands the definition of public charge to include individuals residing in public housing, the Section 8 Housing Choice Voucher Program, and Section 8 Project-Based Rental Assistance

⁷⁵ <http://www.dhcs.ca.gov/services/chdp/Documents/HAG/Chapter6.pdf>

⁷⁶ The 2017 Annual Homeless Assessment Report (AHAR) to Congress, Department of Housing and Urban Development, December 2017, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

⁷⁷ California's Housing Future: Challenges and Opportunities, California Department of Housing and Community Development, January 2017, <http://www.hcd.ca.gov/policy-research/plans-reports/docs/California's-Housing-Future-Full-Public-Draft.pdf>. See Attachment 4.

(including Moderate Rehabilitation) – programs that provide over 400,000 households in California with a place to live.⁷⁸ An affordable place to live does not merely provide shelter, it also leads to better health, education, and economic outcomes – outcomes that strengthen our society and our communities. Because affordable housing is so scarce, yet so critical, we strongly oppose the inclusion of any housing programs in the public charge rule.

As cited above, the proposed rule will have a direct as well as a chilling effect on immigrants applying for and utilizing assistance. Indeed, Western Center began receiving reports of families worried about retaining their housing shortly after the news of the proposed rule was first made public. The reality of immigrant households in the United States is that individual family members have different immigration statuses; some may be citizens, some LPRs, and some another status. In California, 27% of the population is foreign born, and of that, “[a]bout half (49%) of California’s immigrants are naturalized US citizens, and another 26% have some other legal status (including green cards and visas)”.⁷⁹ The proposed rule will not only affect those individuals seeking admission to the U.S., but also their household members. Many of these households will avoid applying to or remaining in the covered housing programs, causing increased homelessness, dangerous overcrowding in market rate housing, and instability.⁸⁰ More specifically, of the 435,909 units in California, covered by the proposed rule 55,524 (or about 12%) of the households have an eligible noncitizen residing in them. Of those 55,524 households, only 23,317 are composed of only noncitizens. In other words, about half of the immigrants living in affected subsidized housing also reside with US citizens. California’s housing market cannot absorb so many households suddenly leaving their affordable homes.⁸¹ The consequences of that will be devastating.

When people are inadequately housed, community and individual health suffers. Studies have demonstrated that homelessness, housing instability, and unaffordability lead to detrimental physical and mental health outcomes.⁸² These housing-associated negative health outcomes can lead to high health care costs.⁸³ Children in unstable housing are particularly harmed, facing hindered cognitive development.⁸⁴ Moreover, “[c]ompared with children in stable housing, children in households behind on rent had

⁷⁸ Center on Budget Policy and Priorities, National and State Housing Fact Sheets & Data, updated August 9, 2017, <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-CA.pdf> See Attachment 6.

⁷⁹ Hans Johnson, Sergio Sanchez, Just the Facts: Immigrants in California, Public Policy Institute of California, May 2018, <https://www.ppic.org/publication/immigrants-in-california/>

⁸⁰ See c.f. PRATT CTR. FOR CMTY. DEV., CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO (2018), <https://prattcenter.net/research/confronting-housing-squeeze-challenges-facing-immigrant-tenants-and-what-new-york-can-do>

⁸¹ Center on Budget and Policy Priorities analysis of HUD administrative data (2017).

⁸² David L. Maness, Do, Mss, And Muneeza Khan, Md, Care of the Homeless: An Overview, Volume 89 American Family Physician Number 8, April 15, 2014, <https://www.aafp.org/afp/2014/0415/p634.html>;

⁸³ Szymkowiak D, Montgomery AE, Johnson EE, Manning T, O'Toole TP. Persistent Super-Utilization of Acute Care Services Among Subgroups of Veterans Experiencing Homelessness. Med Care. 2017 Oct, 55, <https://www.ncbi.nlm.nih.gov/pubmed/28863030>

⁸⁴ FOWLER PJ, McGRATH LM, HENRY DB, ET AL. HOUSING MOBILITY AND COGNITIVE DEVELOPMENT: CHANGE IN VERBAL AND NONVERBAL ABILITIES. CHILD ABUSE NEGL. 2015;48:104-18, [HTTPS://WWW.NCBI.NLM.NIH.GOV/PMC/ARTICLES/PMC4593721/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4593721/)

increased adjusted odds of lifetime hospitalizations . . . and fair and/or poor child health”⁸⁵ Conversely, stable and affordable housing improves health and reduces Medicaid expenditures.⁸⁶ We are healthier and have better outcomes socially and economically as a society when families are housed. The proposed rule fails to consider any of these potential health effects and costs.

A lack of stable affordable housing also forces families to make significant trade-offs that have consequences for the community at large. In particular, they cut back on food, healthcare, and transportation.⁸⁷ “[S]everely cost-burdened families with children in the bottom expenditure quartile cut back most on food. . . . To make ends meet, these families often do not buy enough food for their households or they substitute cheaper but less nutritious foods, either of which can jeopardize their children’s health and development.” As described vividly in Matthew Desmond’s book *Evicted*, these tradeoffs can lead to spiraling consequences.⁸⁸ The experiences of our clients have demonstrated that foregoing bus fare to make rent can lead to a missed day of work, leading to further cutbacks and more instability. Subsidized housing provides the necessary stability to help avoid some of the most desperately-made tradeoffs. The proposed rule threatens to undermine that stability for families with at least one potentially affected immigrant in it, and very likely other immigrant families due to the rule’s chilling effect.

Having a stable home is also a prerequisite to obtaining a quality education. “Residential moves often lead to interruptions in instruction, excessive absenteeism, chaotic environments not conducive to studying, stress, disruptions of peer networks (for older children), and interference with the development of close, personal relationships (for younger children).”⁸⁹ Moreover, losing a housing subsidy can result in a tenfold increase in the likelihood of moving out of a neighborhood when compared with similar non-subsidized households.⁹⁰ Additionally, if a child is in a household that utilizes a voucher in a higher opportunity neighborhood, they can access higher quality schools, improving education outcomes. Many children – some of whom are U.S. citizen children of affected immigrants – will be forced to move from subsidized, affordable units if the proposed rule is adopted, likely disrupting their educational attainment and outcomes. Ensuring that children obtain quality educations is vital for our future and ensuring that all families can access stable housing is necessary for that.

⁸⁵ Megan Sandel, et al, Unstable Housing and Caregiver and Child Health in Renter Families, *Pediatrics* February 2018, VOLUME 141 / ISSUE 2, <http://pediatrics.aappublications.org/content/141/2/e20172199>

⁸⁶ Center for Outcomes Research and Education (CORE) et al., *Health in Housing: Exploring the Intersection between Housing and Health Care*, February 2016, <https://www.enterprisecommunity.org/download?fid=5703&nid=4247>. See Attachment 9.

⁸⁷ Joint Center For Housing Studies of Harvard University, *The State of the Nation’s Housing 2017* at 33, http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf

⁸⁸ Desmond, Matthew. 2016. *Evicted: Poverty and Profit in the American City*.

⁸⁹ Maya Brennan, Patrick Reed, and Lisa A. Sturtevant, *The Impacts of Affordable Housing on Education: A Research Summary*, November 2014, available at <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Education-1.pdf>

⁹⁰ Id.

California does not have enough rental units to house its population, whether moderate or low income. Every unit counts. If the units available to immigrant families are further restricted – as they would be due to the effects of the proposed rule – the crisis will worsen. The proposed rule fails to take these significant societal and financial costs into account.

F. The draft public charge rule fails to consider its impact on employment rights.

Employment, not threats of hunger and unmet basic needs, is the most effective tool to address poverty. California is leading the nation in new job creation. Still, nearly 80% of all California families living with low-incomes have earnings from work and too many low-income workers are unaware of their long-standing or their new rights or what they can do to enforce them.

According to a survey by the National Employment Law Project, about 43% of workers who tried to organize a union were met with illegal employer retaliation. And the UCLA Institute for Research on Labor and Employment reports that although California law mandates a ten-minute rest break for every four hour shift, 81% of survey respondents experienced this right violated by working off the clock and/or denied their break completely. The Economic Policy Institute reports that low-income women workers are more likely than other workers to experience wage theft. While remedies for workers who experience violations of employment laws are available, they can be difficult to access for low-income workers due to legal, financial, and language barriers.

Illegal workplace discrimination is prevalent in today's workforce. Recently published research demonstrates that discrimination in hiring remains a persistent challenge for Black workers. 17% of Black workers are unemployed as compared to 9% of white workers in California. While Black Americans are more educated than previous generations, they still earn only three quarters of what white workers earn. Relative to their share of the overall labor force, Black workers are underrepresented in professional, construction, manufacturing, and food service jobs.

Members of other communities of color also experience high rates of workplace discrimination. One survey found that 62 percent of Asian and Asian Pacific Islander workers felt that their race has impacted their ability to advance at work. According to a Pew research poll, Latino people are the second most discriminated against ethnic group after African-Americans. This is largely due to discrimination against immigrants. 27% of Black Immigrants age 25 and above have a bachelor's degree are higher yet over 7% of the Black Immigrant population is unemployed, the highest among all immigrant groups. More than 40% of lesbian, gay, and bisexual workers report experiencing employment discrimination at some point in their lives, while approximately 90% of transgender workers report experiencing harassment, mistreatment, or discrimination at work or have tried to hide who they are to avoid these experiences.

Women are almost half of the workforce. They are the sole or co-breadwinner in half of American families with children. They receive more college and graduate degrees than men. Yet, on average, women continue to earn considerably less than men. In 2015,

female full-time, year-round workers made only 80 cents for every dollar earned by men, a gender wage gap of 20%. What's more, research completed by the Institute for Women's Policy Research shows that outright discrimination in pay, hiring, or promotions continues to be a significant feature of working life of women all while enduring illegal sexual harassment in the workplace on a much greater scale than men.

Finally, since 1997, the number of religious discrimination charges filed has increased nearly 50%. They are the third-fastest growing discrimination claims behind disability-based (Americans with Disability Act) claims and sexual harassment claims. Most of this increase is the persistent religion-based discrimination against Muslims that increased over 250% after September 11th. Muslims continue to make up a disproportionate amount of the commission's religion-based discrimination charges, hovering over 20%.

While workplace discrimination, worker rights violations and harassment continues to be prevalent in the workplace, enforcement of laws protecting workers against these activities has been reduced at the federal level. Just this year, the Trump Administration chose to stop the Equal Pay Rule, close the Department of Justice (DOJ) Civil Rights Division, halt the implementation of the Employer Information Report (EEO-1), which would have collected pay data broken down by gender, race and ethnicity, end the Wage Gap Initiative housed at the Equal Employment Opportunity Commission (EEOC) and to cuts the EEOC budget by millions. California has yet to fill these new holes in workplace discrimination and harassment enforcement. In fact, just last year, the Governor vetoed legislation that would have increased enforcement.⁹¹

The draft public charge rule fails to consider the disproportionate impact that the rule will have on women and workers of color. Specifically, threatening people with little or no income with a denial of food, housing and basic needs, and penalizing people based on their income in public charge assessment makes them less likely to challenge illegal workplace practices and treatment due to fear of using safety-net services while seeking other employment.

G. The proposed rule will have a disproportionate negative impact on people of color.

People of color make up approximately 36% of the total U.S. population, yet comprise 90% of the people potentially deterred from seeking services by the proposed rule. Of those 90 percent, an estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black people (1.8 million).⁹²

⁹¹ SB 491 (Bradford) was vetoed, but the veto message directed the Department of Fair Housing and Employment (DFEH) to establish a workgroup to identify path forward to support local enforcement of workplace discrimination.

⁹² 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

Recently released research by the Migration Policy Institute found that “[i]mmigrants from Mexico and Central America would be at a higher risk of denial [under the proposed public charge rule’s changed totality of circumstances test] than those from other world regions with 60 percent having two or more negative factors as compared to 48 percent for those from the Caribbean; 41 percent from Asia; 40 percent from South America; 34 percent from Africa; and 27 percent from Europe, Canada, Australia and New Zealand.”⁹³ Thus, the Institute report concludes, “the rule would likely result in a shift in the origins of immigrants granted green cards . . . away from Mexico and Central America and toward other regions, especially Europe.” The disparate impact of a government agency’s action, among other factors, can indicate a discriminatory animus underlying that action that violates the right to equal protection under the law. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

California, home to more immigrants than any other state in the country, and its residents would bear the brunt of the rule’s harsh impact. The vast majority of immigrants in California are people of color.⁹⁴ The Public Policy Institute of California (PPIC) reports that 75 percent of the state’s immigrants are U.S. citizens or have lawful residency or status. PPIC also reports that California’s “[i]mmigrants and US-born residents are equally likely to work—but immigrants make less money.” Thus the rule’s chilling effects on use of benefits and support programs that struggling families might need to get by would disproportionately hurt people of color in California.

For example, the Affordable Care Act has reduced the uninsured rate among all racial/ethnic groups by more than 40%.⁹⁵ According to the California Health Care Foundation, “[b]y 2016, there was no statistically significant difference between the uninsured rates for non-Latino whites (5.8%), African Americans (5.8%), and Asians/Pacific Islanders (5.6%).” Though Latinos have lagged behind, their uninsured rate dropped significantly, from 21.4% in 2013 to 12.4% in 2017. The proposed rule fails to consider how its predicted disproportionate negative effects on people of color and their use of needed health coverage, like Medi-Cal, will reverse or erode California’s historic gains in closing its health insurance gap. In turn, people will be sicker (if they forego or lose health coverage) or poorer (if they have to pay more for health care) which would undermine the proposed rule’s purported aim of self-sufficiency.

⁹³ Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, “Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration,” Migration Policy Institute, November 2018, <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>.

⁹⁴ Hans Johnson and Sergio Sanchez, “Immigrants in California” (Public Policy Institute of California, May 2018), <https://www.ppic.org/publication/immigrants-in-california/>. See Attachment 10.

⁹⁵ Tara Becker, “ACA Reduces Racial/Ethnic Disparities in Health Coverage” (California Health Care Foundation, Oct. 2018), <file:///P:/Public%20Charge/WCLP%20comment/Letter%20Sources/ACA%20Reduces%20Disparities-brief-CHCFoct2018.pdf>. See Attachment 1.

III. Responses to specific questions raised in the preamble to the proposed rule

In addition to the draft regulations themselves, the Department of Homeland Security also poses a number of specific questions in the notice. To be clear, Western Center on Law and Poverty opposes proposed rule as a whole for all the reasons set forth in these comments. We respond to many of the Department's questions here, not because we want to see additional public charge regulations issued in any form, but because the questions raise additional concerns.

A. Should additional programs be counted and should the use of other benefits be counted in the totality of the circumstances test? (FR 51173)

No. 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. As discussed above, the inclusion of other programs, particularly health, nutrition, and housing programs threatens the health and well-being of individuals, families, and communities. Furthermore, allowing additional programs to be included in a totality of the circumstances test would undermine the purpose of a clearly delineated rule that immigrants and their families can rely on. It would contribute to a broader chilling effect and stoke fear within the community. Immigrants and their families would fear participating in any program, no matter how minor or temporary should immigration officials be able to look at anything in a vague totality of the circumstances test. This gives too much power to immigration officials to base decisions on "gut feelings" and our concern is that where decisions are largely arbitrary or discretionary, racially discriminatory and other discriminatory outcomes are much more likely.⁹⁶

B. Should the Children's Health Insurance Program (CHIP) be included in a public charge determination? (FR 51174)

No. We strongly oppose the inclusion of CHIP for the same reasons we oppose the inclusion of Medicaid. 1.3 million children in California rely on CHIP for their health care.⁹⁷ Children enroll in CHIP when their parents are working, but affordable job-based coverage is not available. Their lack of insurance is not a failure of the family, but a failure of a system that does not ensure that working people can afford the necessities of life for themselves and their children. Parents should not be punished for responsibly enrolling their children in health coverage and developing relationships with primary care providers.

As discussed above, access to health care in childhood has lifelong and even intergenerational effects. CHIP has enjoyed broad, bipartisan support since its original

⁹⁶ See *Salami v. Von Maur, Inc.*, 838 N.W.2d 680, n. 1 (Iowa Ct. App. 2013 [unpublished]) (citing expert testimony of Phillip Goff in employment discrimination case that "when decision-makers are encouraged to use subjective, as opposed to objective criteria, this tends to increase the degree of racial bias in decision-making processes.")

⁹⁷ https://www.dhcs.ca.gov/dataandstats/statistics/Pages/RASD_Statistical_Briefs.aspx

enactment in 1997 and its multiple reauthorizations as recently as last year based on the recognition that children need access to health care services to ensure their healthy development. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S and in California. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent. Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."

As noted by the Kaiser Family Foundation, CHIP:

- Can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.
- Improves health which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.⁹⁸

Congress also explicitly expanded coverage to lawfully present children and pregnant women. To reiterate, Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care. Subjecting many of these same immigrants to the public charge rule based on the acceptance of benefits that Congress expressly authorized frustrates the legislative intent and goes beyond the Department's authority. This also infringes on the right of the California to implement a federal option in its own efforts to achieve universal health coverage.

Just as including Medicaid will cause many eligible children to forego health care benefits, including CHIP will have the same effect for the same reasons. Parents of children potentially subject to the public charge rule will disenroll their children, as will parents where any family member could potentially be subject to the public charge rule. These disenrollments will occur whether based on current immigration status, the hope that a path to permanent residency could open up in the future, or the fear that the family might need to leave the United States for an extended period given the needs of other family members abroad.

⁹⁸ "The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?", *Kaiser Family Foundation*, Jul. 2014, <https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/>.

The Department also notes that it does not include CHIP in the proposed rule because CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge determination and that noncitizen participation is relatively low. This suggests to us that the Department is using the public charge rule as a backdoor to reduce government expenditures on programs duly enacted and funded by Congress. This is a broad overreach of the Department's authority and a violation of the separation of powers.

C. Should children's receipt of public benefits be counted against them in determining whether someone is likely to become a public charge? (FR 51174)

No. Evaluating a child's receipt of public benefits in order to determine whether that child will become a public charge in the future is contrary to voluminous studies regarding the benefit of public programs on a child's future. Further, it is contrary to our legal system that gives children, for good reason, few rights in contracting, health care decisions, and other life decisions prior to reaching the age of majority.

If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school means those children are more likely to be healthy successful adults and parents. As discussed above, 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.

Investing in children is the most important investment we can make in our country's future. It is not only cruel, but counterproductive to penalize a child for being a child. Moreover, negatively weighing a child's enrollment in health and nutrition programs would be counter to Congressional intent under both the 2009 CHIPRA and section 4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children.

D. Should the Department treat income below 125 percent of the federal poverty level for the applicable household size as a negative factor? (FR 51187)

No. Not only is 125% FPL by definition above the federal poverty line, it is well above the eligibility limit for almost any means tested cash benefits. A single individual who works full-time year round without missing a single day of would fail to achieve the 125% of FPG threshold if earning the minimum wage. 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. Furthermore, Congress allowed for affidavits of support for individuals unable to demonstrate sufficient income when adjusting status. Congress has already dealt with this issue thus any bright line income test is unnecessary.

E. Should the regulation be delayed in order to help “public benefit granting agencies” prepare? (FR 51174)

To the extent *any* changes are made to the current public charge rule, yes, public agencies will need far longer than 60 days to prepare. Contracts will need to be obtained with vendors in order to reprogram computer systems, all materials pertaining to immigrant eligibility will need to be reviewed, workers will need to be trained, and funding will need to be appropriated in order to do these things through a state’s budget cycle. For context, the Medicaid expansion was passed in March, 2010. Enrollment began in California, like much of the country, in fall of 2013 for January of 2014. Despite that long lead time, the computer system was not ready and nearly 1 million Californians were backlogged waiting to get an eligibility determination. Many suffered terribly from treatable conditions waiting to be enrolled and at least one individual is known to have died waiting.⁹⁹ Many more were not even aware that they were eligible for the new benefit. Given the long delays and challenges in implementation, Western Center and its partners eventually sued the state Department of Health Care Services (DHCS).¹⁰⁰ Under pressure from the court, DHCS then began fast-tracking applications into the system leading to some incorrect or duplicate eligibility determinations, a situation that DHCS is still (in 2018) working with CMS to correct.¹⁰¹ This proposed regulation involved not just one but many state agencies and the risk of incorrect implementation also involve similar risks to health and well-being as people are turned away from health, nutrition, and housing benefits.

F. Should the Department use credit scores in a public charge determination? (FR 51188)

No. Credit reports and credit scores largely rely on social security numbers to track individual’s creditworthiness. Because immigrants do not have social security numbers until they are residing in the United States with an immigration status that entitles them to a social security number, their credit histories are typically merely a fraction of that of a U.S. born citizen. To make matters worse, this lack of a credit score can make it even more difficult to obtain any sort of credit, thus many immigrants are forced into non-traditional products or rely on the credit of friends and family members. For example, when signing up for a utility, rather than use an immigrant household member without credit and be forced to pay an additional deposit of \$500, the household will put the utility in a household members’ name who already has credit. Thus, it can take years for some immigrants to develop any sort of credit record at all and when they do have a score, immigrants’ scores are artificially low due to the foregoing. Given their limited access to credit, most negative items on an immigrants’ credit report are due to things

⁹⁹ See e.g. “Patients Sue State Over Backlog of Medi-Cal Approvals, Now at 350,000”, Eryn Brown, *Los Angeles Times*, Sept. 17, 2014, <https://www.latimes.com/local/lanow/la-me-ln-medi-cal-backlog-lawsuit-20140917-story.html>. See Attachment 14.

¹⁰⁰ *Id.*

¹⁰¹ “California Made Medicaid Payments on Behalf of Newly Eligible Beneficiaries Who Did Not Meet Federal and State Requirements” *Office of the Inspector General*, Feb. 20, 2018, <https://oig.hhs.gov/oas/reports/region9/91602023.asp>. See Attachment 16.

outside of their control, such as debt for emergency medical care or money borrowed when a job is lost. Such issues have no bearing on whether an immigrant will be able to be self-sufficient in the future and the Department offers no evidence to the contrary.

G. Is 36 months the right lookback period? (FR 51200)

No. Any lookback period is inappropriate for a forward-looking determination as to whether someone is likely to become a public charge. Past use of a government-funded program is not necessarily predictive of future use, particularly given that those programs themselves are effective antipoverty programs. If the specific circumstances that led to the use of public benefits no longer apply, the previous use of benefits is irrelevant.

Numerous studies, including those cited above, point to the positive long-term effects of receipt of health, nutrition and housing programs. The proposed rule ignores the fact that public programs are often used as work supports which empower future self-sufficiency. Using benefits can help individuals and their family members become healthier, stronger, and more employable in the future. 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.

H. Should the Department consider cash and long term institutionalization in “some other way” than as a negative factor in the totality of the circumstances test? (FR 51210)

No. Even public benefits that are currently considered in the public charge test should not be elevated to something more than a negative factor in the totality of the circumstances test. Sometimes life does not go as planned – people are laid off, serious accidents occur. Currently, immigrants who recover from such calamities are not penalized indefinitely, nor should they be. To treat acceptance of any benefit for which an individual is eligible as a lifelong scarlet letter goes against the intent of the statute and Congress.

I. Should the Department expand the use of bonds? (FR 51220)

No. Although bonds are currently permitted in federal statute, they are seldom used and the affidavit of support process is sufficient to ensure that an individual is not primarily dependent on government support. In the criminal pretrial context, bonds have been proven to be highly discriminatory racially and economically and to increase financial instability and long-term economic hardship. For these reasons, California recently eliminated pre-trial money bail entirely.¹⁰² The indefinite term and extremely

¹⁰² SB 10 (Hertzberg), Ch. 244, Statutes of 2018.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB10

Samantha Deshommies, Chief

December 7, 2018

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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.

IV. Conclusion

Western Center strongly opposes the proposed rule in its entirety and urges the Department of Homeland Security not to adopt it. Western Center has never supported the concept of public charge due to its history in racial discrimination and because it exacerbates racial disparities, its devaluation of human dignity particularly of those who are aged or disabled, and its blatant bias against low-income people. The current federal guidance, however, at least strikes a balance between the requirements of the public charge statute and the welfare of individuals and communities. The proposed regulations will drive individuals and families into the shadows, dramatically decrease public health and well-being, and destabilize families. No government agency should inflict such suffering on the people it serves.

Sincerely,

A handwritten signature in black ink, appearing to be 'Paul Tepper', with a stylized, sweeping horizontal line extending to the right.

Paul Tepper
Executive Director

Attach.