

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

December 10, 2018

Submitted via www.regulations.gov.

Samantha Deshombres, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Ms. Deshombres:

We are writing on behalf of the National Law Center on Homelessness & Poverty in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018 (CIS No. 2499-10; DHS Docket No. USCIS-2010-0012) (the "proposed rule"). As described below in more detail, the proposed rule would significantly undermine the ability of immigrants in the United States to support themselves and their families and their ultimate goal of achieving self-sufficiency. Moreover, it will increase the panic, fear, and confusion already felt by millions of immigrant families across the country. The effects will stretch beyond just immigrant families, however, as the resulting increase in housing instability and homelessness will cost communities more than keeping families stably housed. As such, we urge the rule to be withdrawn in its entirety, and that long-standing immigration policies continue to remain in effect.

The National Law Center on Homelessness & Poverty is a national legal 501(c)(3) organization dedicated to ending and preventing homelessness. We operate programs across the United States that serve America's more than 3.5 million homeless families, children and individuals. In carrying out this critically important work, we believe that the human rights to housing, and food, and education lie at the heart of human dignity and we envision a world where everyone's basic needs are met. We also believe that no one should be going without the basics in a country as wealthy as ours. The proposed rule directly contradicts these beliefs by punishing immigrants for the receipt of governmental assistance in pursuit of lives without the need of such assistance. Instead, the proposed rule will only serve to exacerbate the underlying problems that it seeks to cure.

As described below, the proposed public charge rule is a dramatic departure from decades of immigration policy, and if finalized, will result in a policy that is fundamentally un-American. Human needs do not change based on immigration status. The proposed rule is impractical, dangerous, and will result in millions of hardworking families forgoing critical, life-saving benefits, including the housing assistance programs covered under the proposed rule. While we are particularly concerned about the public housing and Section 8 benefits targeted under the proposed rule, we stand united with our partners against the proposed rule even if the direct housing impact was reduced to zero, because the effect on other targeted benefits will force immigrants and

their families to forego critical assistance. This means family budgets will be tightened, ultimately impacting the amount of money a family has for housing. We all share the concern that millions of U.S. households struggle to find affordable housing in the ongoing nationwide housing crisis, but blaming struggling immigrant families will not fix this problem. The real issue is the lack of sufficient funding to ensure that every family, regardless of immigration status, has access to one of the most basic of human rights—a safe place to call home.

This letter is divided into four primary sections. The first two sections highlight critical discrepancies between the proposed rule and the historical understanding of who constitutes a “public charge,” and the ways in which the new proposed approach would exacerbate problems that previous guidance had sought to resolve. The third section describes how the proposed rule undercuts the importance of immigrants to the United States economy. Finally, section four specifically describes the detrimental, exacerbating effect that the proposed rule will have on housing and homelessness in the United States, highlighting the ways in which the proposed rule disregards decades of public policy research in this area.

I. THE PROPOSED RULE DEVIATES FROM THE HISTORICAL INTENT OF “PUBLIC CHARGE” DETERMINATIONS

A. The Proposed Rule Does Not Align with The Historical Intent of Public Charge Determinations

The definition of a public charge has changed throughout U.S. immigration history. However, the public charge determination has not always been used in a way that is reflective of American values today, and has been a tool to discriminate against many minority groups. Immigration policy in the United States was unrestricted prior to the late 1800s.¹ In 1875, laws were passed to limit immigrants who were “undesirable,” including criminals, prostitutes, and those with contagious diseases, and in 1882 Congress expanded U.S. immigration law to specifically exclude “lunatics” and immigrants who were likely to become a “public charge.”² A “public charge” was commonly understood to mean a person *primarily* dependent on government for the basic necessities of life. It has never meant to mean a person who merely receives assistance to improve their quality of life.

By the early 1900s, Congress expanded the immigration laws to prevent other “undesirable” individuals from immigrating to the United States.³ Chinese and Japanese immigrants were barred under the public charge determination. Children traveling alone were also considered inadmissible under the public charge definition at that time.⁴ In 1903, the Immigration and Nationality Act, (“INA”) created two different provisions addressing the public charge term.⁵ In section 212 of the INA, the term is a ground of inadmissibility and states, “[a]ny alien who... is likely at any time to become a public charge is inadmissible.” The Congressional Research Service states that the section 212 provision generally applies to: (1) aliens seeking to obtain visas or admissions at ports of entry; (2) aliens within the United States who seek to adjust their

¹ Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 L. & CONTEMP. PROBS. 1, 5 (Fall 2009).

² Claire R. Thomas & Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform*, 31 GEO. IMMIGR. L.J. 197. (2017).

³ *Id.*

⁴ *Id.*

⁵ CONG. RESEARCH SERV., R43220, PUBLIC CHARGE GROUNDS OF INADMISSIBILITY AND DEPORTABILITY: LEGAL OVERVIEW (2017).

status to that of lawful permanent resident (LPR); and (3) aliens who entered the United States without inspection.⁶

In section 237 of the INA, the statute addresses the public charge under deportability and states, “[a]ny alien who, within five years after the date of entry becomes a public charge from causes not affirmatively shown to have arisen since entry is deportable.”⁷ In 1996 Congress amended the INA under 8 U.S.C. section 1182 regarding the definition of a public charge ground of inadmissibility to require that consular and immigration officers take basic factors into consideration when determining if a person is inadmissible or ineligible for adjustment of status under the public charge grounds.⁸ The present statute reads, “[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”⁹ Additionally, the statute’s factors to be taken into consideration, are: (1) age; (2) health; (3) family status; (4) asset, resource, and financial status; and (5) education and skills.¹⁰ Because of the range of factors that may be considered in determining whether a person may be deemed likely to become a public charge, federal agencies are given authority to weigh these factors in deciding whether an individual is likely to become a public charge. Notwithstanding that discretion, federal agencies still are required to make and support their judgment that an individual is likely to become dependent on government assistance for the basic necessities of life. Again the mere provision of assistance to enable a person to live a better, healthier or more secure life is insufficient to support a finding that a person is likely to become a public charge.

In addition to this statutory guidance, agency regulations and guidelines have been relied upon to help define who may become a public charge. The necessity for more clarification came after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), which redefined potential recipients of public benefits and limited their use within the immigrant community—a community that often consists of children born in the United States.¹¹ Immigrants and government officials were provided little information on what public benefit programs could potentially make individuals a public charge after the passage of the PRWORA.¹² In response, the Immigration and Naturalization Service (“INS”) developed formal guidance, though it was never promulgated.

Thereafter, in 1999 the INS issued field guidance that defined a public charge and described how immigration officials should view the receipt of public benefits when determining who would be deemed a public charge.¹³ Under the 1999 INS field guidance, a person may be deemed to be a public charge only when the individual is, “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense. Institutionalization for short periods of rehabilitation does not constitute such primary

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 8 U.S.C. §1182 (2017).

¹⁰ *Id.*

¹¹ CONG. RESEARCH SERV., R43220, PUBLIC CHARGE GROUNDS OF INADMISSIBILITY AND DEPORTABILITY: LEGAL OVERVIEW (2017).

¹² 64 Fed. Reg. 28689 (Mar. 26, 1999).

¹³ *Id.*

dependence.”¹⁴ Moreover, the field guidance also stresses that when determining if an individual is likely to become a public charge, the officers should look to the “totality of the alien’s circumstances at the time of his or her application . . . The existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge.”¹⁵

The proposed rule, if implemented in its current form, will cause more confusion with the public and government officials. Today, many government agencies are still struggling to inform immigrant communities that they will not be labeled a public charge for accepting benefits. If passed, the proposed rule will only undermine and reverse those efforts, potentially resulting in drastic chilling effects on eligible immigrant communities.¹⁶ Families, regardless of their national origin, should not be forced to choose between benefits for which they are eligible on the one hand, or becoming homeless or going hungry because of the risk of being denied the opportunity to adjust their status in the United States. Indeed, many of the benefits captured by the proposed rule can help immigrant communities, including their U.S. citizen children, to thrive in the United States and eventually achieve full self-sufficiency. Therefore, to avoid these spillover harms, the DHS should reconsider the proposed rule.

B. The Proposed Rule Runs Afoul of Administrative and Judicial Precedent

It is also important to consider the ways in which the determination and interpretation of public charge have been informed by administrative and judicial precedent. For example, in *the Matter of A* and the *Matter of T*, the Board of Immigration Appeals (“BIA”) gave discretion to aliens who have been labeled as a public charge, holding that public charge determinations should be narrow.¹⁷ In both cases, the BIA held that an alien may not be deemed inadmissible under public charge grounds even if they have received several government services or have been unemployed for many years. The proposed rule ignores this judicial guidance. The scope and the use of the inadmissibility factor of a public charge was never intended to have the wanton and widespread impacts on a significant subset of the U.S. population that the proposed rule will likely engender. As such, the DHS proposed rule creates a new standard that directly contradicts the judicial guidance regarding public charge determinations.

The proposed rule similarly eschews administrative guidance. As mentioned above, the INS issued field guidance in 1999 (the “1999 guidelines”) to address the intersection of federal, state, and local glosses on the public charge definition at that time.¹⁸ The 1999 guidelines considered a wide array of factors that were informed only *after* consulting with benefit-granting agencies. These guidelines restricted the scope of benefits to be considered when making public charge determinations to non-cash benefits, citing three reasons.¹⁹ First, there is significant confusion about the relationship between the receipt of public benefits and the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage*, Henry J. Kaiser Family Foundation, available at <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

¹⁷ *Matter of A*, 19 I. & N. Dec. 867, 867 (BIA 1988); *Matter of T*, 3 I. & N. Dec. 641 (BIA 1949).

¹⁸ 64 Fed. Reg. 28689 (Mar. 26, 1999)

¹⁹ *Id.*

animating concerns of who should constitute a public charge.²⁰ The second reason is that non-cash benefits are supplemental, and rarely provide enough resources to support a person or a family²¹. Finally, there are several federal, state, and local benefits that are available to families and individuals who are above the federal poverty line, which illustrates an existing moral obligation to improve the lives of persons living in the United States.²²

The proposed rule also deviates from the U.S. Department of State's Foreign Affairs Manual (the "Manual").²³ The Manual states that neither past nor possible future receipt of non-cash or supplemental assistance can be considered in determining if an alien is likely to become a public charge.²⁴ The Manual specifically exempts several programs from the public charge consideration, some of which conflict with those enumerated in the proposed rule.²⁵ Accordingly, the proposed rule has the potential to exacerbate the uncertainty for government officials when making public charge determinations.

Additionally, the list of "negative factors" under the proposed rule that officers are to take into consideration will result in unfairness, as the rule does not provide any guidance as to how these factors are to be weighed. Negative factors that may determine if a person is a future public charge include: Supplemental Security Income; Temporary Assistance to Needy Families; State or local cash benefit programs for income maintenance; Medicaid; Supplemental Nutrition Assistance Program (SNAP, or formerly called "Food Stamps"); Housing assistance under the McKinney-Vento Homeless Assistance Act, or the Housing Choice Voucher Program (Section 8), U.S. Housing Act of 1937; Institutionalization for both long-term and short-term care at government expense; The earned income tax credit and similar refundable tax credits, when the credit exceeds the alien's tax liability; and (n) Any other public benefit, as described in § 212.21 except for those public benefits described in 8 CFR 212.24. The proposed list of negative factors also includes education levels and preexisting medical conditions.

Along with the list of negative factors, the proposed rule lists five "Heavily Weighed Negative Factors," which are "indicative of a likelihood that the alien would become a public charge." The Heavily Weighed Negative Factors include:

- (1) The alien cannot demonstrate current employment, employment history or reasonable prospect of future employment;
- (2) The alien is currently receiving one or more public benefits, as defined in 8 CFR 212.21(b);
- (3) The alien has received one or more public benefit, as defined in 212.21(b), within the 36 months immediately preceding the alien's application for a visa, admission, or adjustment of status;

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ 17 Immigration Law and Procedure 9 FAM 40.41 (2018).

²⁴ *Id.*

²⁵ *Id.*

(4) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and the alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a the medical condition; and

(5) The alien had previously been found inadmissible or deportable on public charge grounds.

These considerations represent a drastic shift from the 1999 guidelines, which were drafted to avoid confusion by only weighing only cash benefits received by immigrants. In limiting the determination of a public charge to cash benefits, the current guidelines: (1) avoid confusion in the relationship between the receipt of public benefits and the concept of a public charge, which deterred eligible aliens and their families, including U.S. citizen children, from seeking health and nutrition benefits that they are legally entitled to; (2) affirmatively state that non-cash benefits are supplemental and do not provide enough resources to support a person or a family; and (3) promote the important public policy decision regarding the improvement of the livelihood of the overall population through many federal, state, and local benefits that are made available to families and individuals who are above the federal poverty line.

On the other hand, the proposed rule's burdensome weighting exercise conflicts with this attempt to standardize public charge determinations; contradicts the mission of several other federal, state and local agencies; and will discourage many individuals from receiving benefits to which they are entitled.

C. The Proposed Rule is at Odds with the Mission of State and Federal Assistance Programs and Agencies

Several federal agencies have a mission to provide services to citizens and non-citizens alike. Many federal agencies recognize that some public benefits programs should not be considered in public charge determinations. For example, supplemental nutrition programs have been excluded from consideration of individual public charge determinations. As mentioned above, the Department of State's foreign affairs Manual, explicitly exempts food stamps (now "SNAP") from consideration in public charge determinations because the program is "supplemental" in nature.²⁶ SNAP is just one out of many federal programs which provides services to immigrant communities, and as a matter of public policy must attempt to reach as many individuals.

State and local benefits programs will also be negatively impacted if the DHS proposed rule is promulgated. Even in the passage of the 1996 PRWORA, the federal government took into consideration that many state and local governments had legitimate interests in providing public services to immigrant communities.²⁷ Despite PRWORA's five-year ban on immigrants being

²⁶ 17 Immigration Law and Procedure 9 FAM § 40.41 n.9.1

²⁷ Claire R. Thomas & Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform*, 31 GEO. IMMIGR. L.J. 197. (2017).

able to use public assistance programs, states are still allowed to provide funding to cover qualified and non-qualified immigrants during the five-year period. Additional legislation has also allowed States to provide benefits to “illegal aliens” through state laws that affirmatively provides eligibility for “illegal aliens.”²⁸ Upon the passage of these federal laws, Congress was aware that state and local governments believed it was in their best interest to provide certain social programs to all individuals residing in their communities. The proposed DHS rule fails to consider the purpose and goals of other federal, state, and local agencies that strive to provide access and care to individuals in their communities.

Upon the passage of PRWORA and the restriction of benefits for different categories of immigrants, confusion and a decreased participation in public benefit programs by individuals in the immigrant community followed.²⁹ One of the most notable changes occurred in lower-income immigrant communities who were eligible for certain government programs, but refused to participate out of fear of being labeled a public charge.³⁰ By refusing to participate in public benefit programs, many immigrant families also refuse to allow their children, many of whom are U.S. citizens, from also participating in government programs.³¹ As stated in the 1999 guidelines, U.S. citizen children were not receiving benefits out of fear that their parents their parents could be labeled a public charge.³² Yet, the proposed rule goes even further by expressly stating that many non-cash benefits will be included in public charge determinations.

For decades government agencies have had dealt with the current barriers created by PRWORA and have had to reach out to immigrant communities to convince them that their participation in certain programs is not only allowed but encouraged. If the DHS proposed rule is promulgated as currently constituted, government agencies will no longer be able to say with certainty that an immigrant’s use of non-cash benefits will not label them as a public charge, and the proposed rule fails to properly account for these severe ramifications.

II. THE PROPOSED RULE UNDERVALUES THE IMPORTANCE OF IMMIGRANTS TO THE CONTINUED GROWTH OF THE UNITED STATES ECONOMY

Under the new proposed rule, many immigrants who work full time and contribute to the United States economy could be barred admission or denied permanent residency. Immigrants’ contributions to the United States economy cannot be understated and the proposed rule would result in significant negative consequences.

Immigrants pay a substantial amount in taxes that help to contribute to federal and state services that benefit all Americans. In 2014, immigrants paid an estimated \$223.6 billion in federal taxes.³³ This includes \$123.7 billion in Social Security tax and \$32.9 billion in Medicare tax.³⁴

²⁸ Seth M.M. Stodder & Nicolle Sciara Rippeon, *State and Local Governments and Immigration Laws*, THE URBAN LAWYER, (2009) (quoting 8 U.S.C. § 1621(d)).

²⁹ Claire R. Thomas & Ernie Collette, *Unaccompanied and Excluded from Food Security: A Call for the Inclusion of Immigrant Youth Twenty Years after Welfare Reform*, 31 GEO. IMMIGR. L.J. 197. (2017).

³⁰ *Id.*

³¹ *Id.*

³² 64 Fed. Reg. 28689 (Mar. 26, 1999).

³³ *Taxes & Spending Power*, New American Economy, available at <https://www.newamericaneconomy.org/issues/taxes-&-spending-power/> (last visited 12/3/2018).

³⁴ *Id.*

On the state and local level, immigrants paid \$104.6 billion in taxes.³⁵ In California, immigrants pay 28 percent of the total taxes in the state.³⁶ Immigrants also paid nearly a quarter of all taxes in New York and New Jersey.³⁷

Even undocumented immigrants paid \$11.7 billion in state and local taxes.³⁸ However, the new proposed rule would discourage undocumented immigrants from seeking a pathway to legal status and, as a result, their income will remain untraceable which lessens the amount of income the country is able to tax.

Immigrants also make up a significant part of the U.S. workforce. In 2014, immigrants earned a total of \$1.3 trillion in wages—14.2 percent of all income earned in the United States.³⁹ The percentage of income earned is greater than the percentage of immigrants in the general population—13.2 percent.⁴⁰ This is because a greater percentage of immigrants are in their working and income-earning years when they arrive in the United States, whereas there is a thirty-year birth rate low in the United States and baby boomer generation is retiring. The baby boomer generation retiring is especially significant because immigrants are expected to contribute trillions of dollars over the next 30 to 40 years to the Social Security and Medicare programs.⁴¹

Moreover, much of the revenue earned by immigrants goes back into the United States economy, creating demand for goods and services, which, in turn, helps create more jobs. The new proposed rule would inhibit the workers who are available to come into the country to help fill these jobs and contribute to our economy. Job openings have consistently exceeded unemployed Americans as of late.⁴² There is an especially large increase in manufacturing jobs and the manufacturing industry is one that is especially dependent on immigrants.⁴³ The agriculture, construction, leisure and hospitality industries also rely heavily on immigrants and would be hurt significantly by this new proposed rule. Immigration helps fill our labor force needs and the new proposed rule would inhibit that growth. Moreover, allowing immigrants to fill our labor force needs will actually help them to not become “public charges.”

III. THE PROPOSED RULE USES SEVERAL FACTORS THAT ARE INAPPROPRIATE FOR PUBLIC CHARGE DETERMINATIONS

A. Family Status

The United States has a higher percentage of reported family-based immigration than other nations around the world, as family-based immigration accounts for approximately 65 percent

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power*, Immigration Forum, Sept. 6, 2018, available at <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-tax-contributions-and-spending-power/>, (last visited 12/3/2018).

⁴⁰ *Id.*

⁴¹ *Why baby boomers need immigrants to fund their retirement, in 2 charts*, VOX, Oct. 23, 2018, available at <https://www.vox.com/2018/8/1/17561014/immigration-social-security>, (last visited 12/3/2018).

⁴² *Job Openings Exceed Unemployed Americans Again in July as Employers Feel the Pinch*, Wall Street Journal, Sept. 11, 2018, <https://www.wsj.com/articles/job-openings-exceed-unemployed-americans-again-in-july-as-employers-feel-the-pinch-1536691533> (last visited 12/3/2018).

⁴³ *Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds*, New American Economy, Oct. 31, 2018, available at <https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/> (last visited 12/3/2018).

of the total annual number of immigrants that come to the United States each year. This is in comparison to Australia, where the total family-based immigration only accounts for 30.2 percent of all immigrants, or Canada, where family-based immigration is only 24.4 percent of the total new immigrant population. Overall, recent studies have also pointed out that family-based immigration may also have an overall positive impact on the U.S. economy, and suggested that a predominantly family-based migration system carries a net economic benefit. Additional research emphasized that both high- and low- skilled immigrants are crucial for sustaining economic growth. Even though family-based immigrants have lower human capital upon arrival as compared employment-based immigrants, over time these differences shrink. Family migrants are more likely to have upward socioeconomic mobility than employment-based migrants.

When considering an immigrant's family status, the proposed rule states that a determining factor is if an immigrant has or is a dependent. This has direct implications on family-based immigrants, as their family sizes are larger and there are more dependents within the household than those coming to the U.S. based solely on skills. When evaluating an immigrant's family status, the proposed rule states that an immigrant's household income must be more than 125 percent of the most recent Federal Poverty Guidelines. This threshold is extreme, as more than 41 million people in the United States currently live under the 125 percent threshold. If applied to the general population, millions would fall victim to this factor.

Therefore, the negative impact of weighing non-cash based public assistance programs will dramatically affect those who are here based on family-immigration status. Immigrants with young children will be even more affected due to the possible health costs and living expenses associated with having a child. When considering the additional costs of dependents, benefit programs can contribute to the alleviation of poverty and can help keep families from homelessness. Two factors that can help these families provide for their children and enable their future success.

B. Assets and Resources

The proposed rule also looks at each immigrant's assets and resources in making a public charge determination. The rule rationalizes this approach by stating that the more assets and resources an immigrant has, the more "self-sufficient" they will be and by extension will have a decreased probability of using public assistance. Conversely, if an immigrant has very few assets and resources, there is a higher probability that the immigrant will not be able to support their household without the use of a public benefit. As with the family status factor described above, the rule states that the analysis of the immigrant's assets and resources must be weighed in conjunction with the immigrant's dependents to establish whether the immigrant's household is above the 125-percent Federal Poverty Guideline threshold. Similar to the issues with analyzing the family status of each immigrant, by stating that an immigrant has a negative factor because of a lack of accumulated assets and resources drastically effects those coming to the United States under a family-based immigration system than it does based on a single person coming for a work or an already-developed skill. As stated above, family-based immigration has shown to greatly improve the overall economy given the rise in socioeconomic status. By discouraging family-based immigration, new immigrants coming to the United States will

solely be those who are coming because of a pre-developed skill and will have less growth than those coming based on family-based immigration statuses.

C. Education and Skills

Under the proposed rule, when considering an immigrant's public charge status, the immigrant's education and skills are to be a factor to predict if the immigrant will be able to obtain or maintain a full-time job. This is based on an assumption that individuals who have a highly recognized degree or a unique skill are more likely to succeed in the United. Highly-skilled migrants often experience downward mobility post-migration because their foreign degrees, credentials, and work experience are not directly transferable to the US job market. The proposed rule suggests immigrants that do not have high levels of education or desirable skills will have a heavily weighted negative factor contributing to a possible showing of a future public charge status. However, recent data shows this factor is misguided when determining if a person could be considered for public charge inadmissibility or deportability.

One important issue to look at is the rise of the second generation and the change in education levels that occurs. The Pew Hispanic Center found that “[n]ative-born Latinos have distinctly higher levels of education than their immigrant counterparts. Thus, change in the generational composition alone—without any change in attainment—will significantly lift the educational profile of the Latino population.”

This demonstrates that even though many first-generation Americans may face issues with lower education levels, subsequent generations dramatically improve their educational profiles. The proposed rule is simply not supported by evidence that demonstrates that educational attainment standing alone is a reliable predictor of when someone is likely to become a public charge.

IV. THE PROPOSED RULE WILL HAVE A DETRIMENTAL EFFECT ON HOUSING AND HOMELESSNESS IN THE UNITED STATES

A. The Proposed Rule Will Increase the Risk of Homelessness Among Immigrant Families, Which Costs More than Preventing Homelessness

This proposed rule will prevent thousands of immigrant families from gaining access to safe and affordable housing because it will force immigrants who are lawfully present in the United States to choose between housing benefits which would support the immediate health and safety of their families and their ability to adjust their immigration status and eventually become U.S. citizens. Housing assistance programs such as the Section 8 and public housing programs targeted by the proposed rule have proven crucial in reducing homelessness among low-income families.⁴⁴ Indeed, voucher programs cut a family's risk of experiencing at least one night of

⁴⁴ See Anna Bailey, *Housing Vouchers Work: Vouchers the Best Tool to End Homelessness*, CTR. ON BUDGET & POL'Y PRIORITIES BLOG (Apr. 6, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-vouchers-the-best-tool-to-end-homelessness> (citing OFFICE OF POL'Y DEV. & RESEARCH, DEP'T HOUSING & URBAN DEV., THE FAMILY OPTIONS STUDY (Oct. 2016), https://www.huduser.gov/portal/family_options_study.html#impact-overview-tab); see also Michelle Wood, et al., *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*, 19 HOUSING POL'Y DEBATE 367, 381 (2008) (many study participant families could only afford a home of their own because of their housing voucher).

homelessness per year by more than half.⁴⁵ Immigrant families already suffer from discrimination that hinders their ability to secure affordable and adequate housing.⁴⁶ The effects of this discrimination will be exacerbated if low-income immigrant families are denied access to resources that alleviate some of their economic strain.

This Administration's own Federal Strategic Plan to Prevent and End Homelessness, issued just a few months ago, calls for an increased focus on preventing homelessness, including by "Improv[ing] access to federally funded housing assistance by eliminating administrative barriers and encouraging targeting and prioritization of affordable housing to ... populations that are especially vulnerable to homelessness."⁴⁷ This strategy is based in the research that shows that preventing homelessness costs communities much less than dealing with homelessness once it occurs.⁴⁸ Far from saving tax-payer dollars, the proposed rule would in fact cost communities more, while creating worse outcomes for the affected individuals.

This proposed change will have a particularly harmful effect on children, including the U.S. citizen children of immigrant parents. While immigrant parents' use of housing assistance for their U.S. citizen children will not negatively affect their eligibility for adjustment of status, the proposed rule will prevent U.S. citizen children from experiencing the full benefits of these programs because their families will now opt out of receiving their noncitizen family members' portion of the benefits. This will relegate U.S. citizen children to smaller, more overcrowded, less stable homes, just because of their parents' immigration status.⁴⁹

B. Housing Stability Increases Economic Outcomes and Self-Sufficiency

Denying immigrant families access to safe and affordable housing will decrease their current quality of life and inhibit their economic prospects.⁵⁰ When low-income families are given assistance that allows them to move to lower-poverty neighborhoods, they enjoy better employment prospects and residential conditions, and many more children from these families ultimately go on to graduate high school than they might have otherwise.⁵¹ The housing

⁴⁵ See Bailey, *supra* note 44; *cf.* Wood, *supra* note 44, at 381–82 (only 9% of voucher users in study experienced time without a place of their own during one-year period, compared to 45% of participants without vouchers); *id.* at 383 (a voucher reduced the incidence of staying with friends or family by 69% and decreased in the incidence of staying in a shelter or on the streets by 74%).

⁴⁶ See, e.g., ADVOCATES FOR HUMAN RIGHTS, MOVING FROM EXCLUSION TO BELONGING: IMMIGRANT RIGHTS IN MINNESOTA TODAY 184–86 (Mar. 2014), https://www.theadvocatesforhumanrights.org/uploads/ahr_moving_from_exclusion_to_belonging_final_2.pdf; PRATT CTR. FOR CMTY. DEV., CONFRONTING THE HOUSING SQUEEZE: CHALLENGES FACING IMMIGRANT TENANTS, AND WHAT NEW YORK CAN DO 28 (2018), https://prattcenter.net/sites/default/files/confronting_the_housing_squeeze.pdf.

⁴⁷ See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOME TOGETHER: FEDERAL STRATEGIC PLAN TO END AND PREVENT HOMELESSNESS 4, 14 (July 19, 2018), <https://www.usich.gov/home-together/>.

⁴⁸ See, e.g. STOUT, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS (Nov. 13, 2018) (for every dollar spent on eviction prevention in Philadelphia, the city would get a benefit of at least \$12.74), <https://www.stout.com/-/media/1ce37f926e3147f082a918db1393fbc8.ashx>.

⁴⁹ Wood, *supra* note 44, at 384 (vouchers cut the chance of living in overcrowded housing by more than half).

⁵⁰ See Victoria Basolo & Mai Thi Nguyen, Office of Pol'y Dev. & Research, Dep't Housing & Urban Dev., *Immigrants' Housing Search and Neighborhood Conditions: A Comparative Analysis of Housing Choice Voucher Holders*, 11 CITYSCAPE: J. POL'Y DEV. & RESEARCH 99, 100 (2009) ("Residential choice plays a critical role in the life trajectories of immigrants. It is both a predictor of potential opportunities and a measure of assimilation into a new society.")

⁵¹ James E. Rosenbaum, *et al.*, *How Do Places Matter? The Geography of Opportunity, Self-Efficacy, and a Look Inside the Black Box of Residential Mobility*, 17 HOUSING STUDIES 71 (2002); LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* (2000).

assistance programs at issue in this proposed rule have been instrumental in helping families, including many immigrant families, move to lower-poverty neighborhoods.⁵²

Indeed, access to housing assistance, regardless of whether they allow families to move to lower-poverty neighborhoods, is beneficial to families' economic prospects for a multitude of reasons. Vouchers allow parents to climb the economic ladder. Parents with access to vouchers are more likely to reduce their family's debt or credit problems with the money they are saving on housing, and some have used their increased financial stability to return to school or change jobs, improving their family's financial situation in the long run.⁵³ Conversely, families who are forced to spend a higher portion of their income on rent have less money to spend on other necessities such as food and medical care.⁵⁴ Having less money to spend on such necessities can lead to food insecurity, which negatively affects the health and cognitive development of children.⁵⁵ Meanwhile, the stress associated with having limited financial means can lead to increased physical and emotional challenges for parents, which in turn decreases children's wellbeing.⁵⁶ Additionally, housing instability has been linked to parents postponing needed medical visits and the purchase of needed medications, threatening their ability to care of their dependent children.⁵⁷

Similarly, housing instability and overcrowding can negatively affect child development and educational achievement.⁵⁸ Indeed, studies have found that children growing up in overcrowded housing have lower test scores, complete fewer years of schooling, are more likely to fall behind in school, and are less likely to graduate from high school than their peers.⁵⁹ This decreases children's earning potential later on in life.

Where housing instability turns into homelessness, these deleterious effects on children and youth's physical and emotional wellbeing and on their academic performance are multiplied.⁶⁰

⁵² EMILY ROSENBAUM & SAMANTHA FRIEDMAN, *THE HOUSING DIVIDE: HOW GENERATIONS OF IMMIGRANTS FARE IN NEW YORK'S HOUSING MARKET* (2007).

⁵³ Wood, *supra* note 44, at 401.

⁵⁴ JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *THE STATE OF THE NATION'S HOUSING 2014*, <http://www.jchs.harvard.edu/research/publications/state-nationshousing-2014>; GREGORY MILLS, *ET AL.*, U.S. DEP'T OF HOUSING & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, *EFFECTS OF HOUSING VOUCHERS ON WELFARE FAMILIES* (2006).

⁵⁵ Sheila Crowley, *The Affordable Housing Crisis: Residential Mobility of Poor Families and School Mobility of Poor Children*, 72 J. NEGRO EDUC. 22, 22–38 (2003).

⁵⁶ MARY CUNNINGHAM & GRAHAM MACDONALD, URBAN INST., *HOUSING AS A PLATFORM FOR IMPROVING EDUCATION OUTCOMES AMONG LOW-INCOME CHILDREN* (2012),

<http://www.urban.org/research/publication/housing-platform-improving-education-outcomes-among-lowincome-children>; Sandra Newman & C. Scott Holupka, *Housing Affordability and Child Well-Being*, 25 HOUSING POL'Y DEBATE 1, 1–36 (2014).

⁵⁷ Margot Kushel, *et al.*, *Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans*, 21 J. GEN. INTERNAL MED. 71, 71–77 (2006).

⁵⁸ REBECCA COHEN & KEITH WARDRIP, CTR. FOR HOUSING POLICY, *SHOULD I STAY OR SHOULD I GO? EXPLORING THE EFFECTS OF HOUSING INSTABILITY AND MOBILITY ON CHILDREN* (2011); Kathleen Ziol-Guest & Claire McKenna, *Early Childhood Housing Instability and School Readiness*, 85 CHILD DEV. 103, 103–13. (2014); ARTHUR J. REYNOLDS, *ET AL.*, *SCHOOL MOBILITY AND EDUCATIONAL SUCCESS: A RESEARCH SYNTHESIS AND EVIDENCE ON PREVENTION* (2009),

<http://www.nationalacademies.org/hmd/~media/Files/Activity%20Files/Children/ChildMobility/Reynolds%20Chen%20and%20Herbers.pdf>.

⁵⁹ MAYA BRENNAN, *ET AL.*, CTR. FOR HOUSING POLICY, *THE IMPACTS OF AFFORDABLE HOUSING ON EDUCATION: A RESEARCH SUMMARY* (2014), <http://www.nhc.org/#!2014-impacts-of-affhousing-education/cp0d7>.

⁶⁰ Nat'l Ctr. on Family Homelessness, *The SHIFT Study: Final Report*, <http://www.familyhomelessness.org/media/389.pdf> (As demonstrated in the 2007-2010 Service and Housing Interventions for Families in Transition (SHIFT) Longitudinal Study conducted by the National Center on Family Homelessness, addressing the needs of homeless children is critical to their well-being and future prospects; it is also essential to ensuring family stability); *see also* Megan Sandel *et al.*, *Children's Health Watch & Ctr. for Housing Policy at Nat'l Housing Conference, Compounding Stress: The Timing and Duration Effects*

Irreparable harm can result when a child's education is interrupted.⁶¹ Studies have shown that it takes a child four to six months to recover academically from each school transfer,⁶² and six to 18 months to regain a sense of equilibrium, security, and control.⁶³ Homeless children who frequently transfer schools are more likely to repeat a grade, more likely to have poor attendance, and more likely to have worse overall academic performance than their peers who remain in stable school placements.⁶⁴ Furthermore, homelessness is directly correlated to decreases in student retention rates and contributes to homeless students' high suspension rates, school turnover, truancy, and expulsions.⁶⁵ Increasing the need for stability and support is the fact that compared to permanently housed children, school-age homeless children were significantly more likely to have a mental health problem.⁶⁶

Schools also serve as a source of nutritious meals and basic health care, and can serve as an entry point for other vital services, including but not limited to housing, for children and youth and their families. Moreover, school stability is critical for homeless children and youth, not only providing continuity during a turbulent time in their lives but also leading to improved academic outcomes.⁶⁷ Continuity of education during homelessness is vital not only for children and youth's mental and emotional health in the short-term, but for their future ability to succeed in a competitive job market and break the cycle of homelessness and poverty, because childhood homelessness is a strong predictor of adult homelessness.⁶⁸

These education effects hit not only the affected students, but also their schools: under federal law, schools must ensure continuity of education to homeless students and youth, including by providing transportation across district lines.⁶⁹ Transportation can be costly, and while transportation must continue as an essential service for homeless students, a better option for the students, and more cost-effective resolution for the community, is preventing homelessness

of Homelessness on Children's Health, http://www.childrenshealthwatch.org/wp-content/uploads/Compounding-Stress_2015.pdf.

⁶¹ *Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980).

⁶² Debbie Staub & Mona Meighan, *Improving Educational Success for Children and Youth in Foster Care: Ensuring School Stability*, available at <http://www.nasponline.org/publications/cq/36/4/fostercare.aspx>.

⁶³ Linda Jacobson, *Moving Targets*, Education Week (Apr. 4, 2001); see also Nat'l Ctr. for Homeless Educ., NCHHE Mobility Study Bibliography (Sept. 2011), http://center.serve.org/nche/downloads/nche_mobil_biblio.doc.

⁶⁴ Homes for the Homeless & The Inst. for Children & Poverty, *Homeless in America: A Children's Story – Part One* (1999); see also U.S. Dep't of Educ., *Education for Homeless Children and Youths Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act, as Amended by the Every Student Succeeds Act, Non-Regulatory Guidance* (hereinafter "2016 Guidance"), at 2 (July 27, 2016), available at <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>.

⁶⁵ Mai Abdul Rahman, *The Demographic Profile of Black Homeless High School Students Residing in the District of Columbia Shelters and the Factors that Influence their Education* 55 (Mar. 2014) (Ph.D. dissertation, Howard University), available at <http://gradworks.umi.com/3639463.pdf>.

⁶⁶ Ellen Bassuk, et al., *The Prevalence of Mental Illness in Homeless Children: A Systematic Review and Meta-Analysis*, 54 JOURNAL OF THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY (2015).

⁶⁷ A 2006 study by the Washington State Agency Council on Coordinated Transportation compared the performance of homeless students who stayed in their schools of origin with homeless students who changed schools and found that those who stayed in their schools of origin consistently achieved higher test scores and grade point averages than those who changed schools. The constancy and community helped provide the support these children needed. See Daniel Carlson et al., *Homeless Student Transportation Project Evaluation*, Washington State Transportation Center (TRAC), University of Washington (2006), <http://www.wsdot.wa.gov/research/reports/fullreports/665.1.pdf>.

⁶⁸ Ann Elizabeth Montgomery, et al., *Relationship Among Adverse Childhood Experiences, History of Active Military Service, and Adult Outcomes: Homelessness, Mental Health, and Physical Health*, Am J Public Health (2013).

⁶⁹ See 42 U.S.C. § 11431 et seq.

from forcing the family or youth out of the district in the first place.⁷⁰ For example, in the Seattle area, the costs to house unaccompanied homeless youth in supportive housing, or to place a homeless family in a two bedroom apartment with a Section 8 voucher, are less than or equal to the likely costs associated with providing special transportation.⁷¹ Thus, stopping families from accessing federal housing benefits will likely simply end up shifting, and exacerbating, the costs to local school districts.

Overall, this proposed rule will have the opposite effect of what it intends to accomplish. It will make immigrants poorer, hungrier, sicker, and less likely to achieve middle class status. Further, it will punish U.S. citizen children who would otherwise have access to larger and safer homes, more food, and a better education, just because of their parents' immigration status.

C. The Proposed Rule Harms Immigrants Receiving Housing Assistance and Will Hurt the United States Housing Market

The proposed rule will punish those who are working to make a better life for themselves and their family by forcing them to not seek help from the government when they are in need, thereby creating a cycle of poverty and making their route a better life that much more difficult. The proposed rule departs from long-standing immigration policy where the use of these critical, life-sustaining programs were not counted against immigrants and their families. The rule unfairly and specifically targets low-income immigrants and implicitly and incorrectly assumes that people who receive benefits are unlikely to become productive contributors to the United States in the future. This assumption has been disproven generation after generation. The children of low-income immigrants continually go on to have great success and are playing a central role in shaping America's economy. In fact, nearly 44 percent of America's Fortune 500 companies were founded by an immigrant or a child of an immigrant.⁷²

While our organization is primarily concerned with the value of housing as a social good, rather than purely as a commodity, we also note that the proposed rule will also significantly harm the U.S. housing market, and thereby the entire economy. Immigrants have a sizable presence in housing markets, making up 20 percent of renter households and 12 percent of homeowners.⁷³ A third of the 11 million undocumented immigrants in the United States live in a home that they or a family member or friend own.⁷⁴ It is not uncommon for lenders to market and provide loans to undocumented immigrants.⁷⁵ In fact, new arrivals are expected to account for more than a third of growth of homeowners this decade.⁷⁶ The proposed rule would hinder that growth significantly.

⁷⁰ See National Law Center on Homelessness & Poverty, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* (2011), available at http://www.nlchp.org/documents/Beds_and_Buses.

⁷¹ *Id.* at 5.

⁷² *Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds*, New American Economy, Oct. 31, 2018, available at <https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/>

⁷³ *The State of the Nation's Housing 2018*, Joint Center For Housing Studies of Harvard University, available at http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf (last visited 12/3/2018).

⁷⁴ *Why Trump's Immigration Crackdown Could Sink U.S. Home Prices*, Bloomberg, Feb. 22, 2017, available at <https://www.bloomberg.com/news/articles/2017-02-22/why-trump-s-immigration-crackdown-could-sink-u-s-home-prices> (last visited 12/3/2018).

⁷⁵ *Id.*

⁷⁶ *The State of the Nation's Housing 2018*, Joint Center For Housing Studies of Harvard University, available at http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf (last visited 12/3/2018).

Moreover, immigrants, who comprise more than a third of household growth in the United States over the past three decades, are fueling housing demand.⁷⁷ While the U.S. homeownership rate in 2015 was the same as it was in 1994—66 percent—it has risen 2.4 percentage points for immigrants, to more than half.⁷⁸ The country’s immigrants add an estimated \$3.7 trillion to total housing wealth.⁷⁹

Immigrants have also bolstered housing demand during downturns. For example, 1.5 million immigrant households became homeowners in 2006–2016, offsetting the 1.1 million decline in native-born homeowners.⁸⁰ Immigrants have also helped to stabilize urban and rural communities that would have otherwise lost population. For example, Philadelphia is among the 47 metro areas where immigration fully offset domestic outmigration between 2010 and 2017.⁸¹

Also, during this period, 3.8 million international immigrants moved to the core counties of the nation’s largest metros, compared with a 1.2 million net loss to domestic migration.⁸² Another 250,000 international migrants moved to rural counties, helping to replace some of the 800,000 residents lost to outmigration.⁸³

Immigrants help the economy and housing market much more than they rely on it and as such, they should not be punished with the threat of a public charge under the new proposed rule if they temporarily need to receive housing assistance.

D. The Proposed Rule Significantly Undervalues Homeownership

The proposed rule considers an immigrant’s assets, including “non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home.”⁸⁴ The use of a bare net equity calculation is inappropriate and unfair in the context of a public charge determination.

For instance, by relying solely on a present net equity valuation, the proposed regulation ignores the well-documented correlation between homeownership and many important indicators of future financial self-sufficiency, including reduced reliance on public benefits. A recent study reviewing the academic literature about the benefits of homeownership, *The Social Benefits of Homeownership and Stable Housing*, found that “[h]omeownership boosts the educational performance of children, induces higher participation in civic and volunteering activity, improves health care outcomes, lowers crime rates and lessens welfare dependency.”⁸⁵ Other studies have also documented significant decreases in reliance on public benefits programs for

⁷⁷ *Id.*

⁷⁸ *Why Trump’s Immigration Crackdown Could Sink U.S. Home Prices*, Bloomberg, Feb. 22, 2017, available at <https://www.bloomberg.com/news/articles/2017-02-22/why-trump-s-immigration-crackdown-could-sink-u-s-home-prices> (last visited 12/3/2018).

⁷⁹ *Id.*

⁸⁰ *The State of the Nation’s Housing 2018*, Joint Center For Housing Studies of Harvard University, available at http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf (last visited 12/3/2018).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51291 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

⁸⁵ See <https://realtoru.edu/wp-content/uploads/2014/06/Homeownership-Stable-Housing.pdf>.

homeowners.⁸⁶ The proposed rule will direct DHS to consider, in determining whether a non-citizen is likely to become a public charge, the applicant's assets, including "non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home."⁸⁷ The use of a bare net equity calculation as of the date of DHS review is inappropriate and unfair in the context of a public charge determination.

E. Housing Providers and Landlords Will Be Significantly Burdened by The Rule

The rule's impact will not be limited to immigrants and their families. Public housing agencies and other affordable housing providers have already begun to receive questions from tenants fearful about the implications of the public charge rule on their families. Housing providers will have to be prepared to answer consumer questions about the new rule. They will experience increased call volume and traffic from tenants and applicants about the new policies. They will also have to update forms and notices to ensure that they are providing tenants and applicants with accurate information about the potential consequences of receiving certain housing assistance. This is an administrative cost that has been placed on owners and property managers that is completely unaccounted for in the rule.

Furthermore, the rule would generate a tremendous workload for housing providers that will need to provide immigrants with documentation regarding their history of benefit receipt. The draft form I-944, Declaration of Self-Sufficiency, instructions provided with the NPRM direct individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of "a letter, notice, certification, or other agency documents" that contain information about the exact amount and dates of benefits received.⁸⁸ This will create a huge administrative cost for affordable housing providers, many of which are not equipped financially or in terms of capacity to respond to these queries.

Additionally, housing providers are anticipating that the chilling effect of this rule will result in many eligible immigrant families to forgo housing assistance, leading to tenant turnover in their assisted units. This turnover poses significant administrative costs for housing providers. Again, these costs and burdens on housing providers are not addressed in the rule. DHS should partner with HUD to perform a comprehensive study on the impact the public charge rule will have on housing providers and local housing markets more generally, before finalizing the proposed rule.

F. The Rule Undermines U.S. Human Rights Obligations

We are mindful that we submit this comment on Human Rights Day, the anniversary of the signing of the Universal Declaration of Human Rights in 1948. At the time, the U.S. was an international leader in promoting the human right to adequate housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that "everyone has the right to an adequate standard of living... including the right to housing."⁸⁹

⁸⁶ See, e.g., <https://minnesota.uli.org/wp-content/uploads/sites/31/2017/12/TCHFH-Impact-2020.pdf> and <https://www.athenshabitat.com/homeowner-statistics-2016/>.

⁸⁷ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51291 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, and 248).

⁸⁸ DEP'T HOMELAND SEC., FORM I-944, INSTRUCTIONS FOR DECLARATION OF SELF-SUFFICIENCY (2018), <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>.

⁸⁹ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt. 1, art. 25(1), U.N. Doc. A/810 (1948).

The following year, the 1949 Federal Housing Act stated a similar goal of “a decent home and suitable living arrangement for every American family.”⁹⁰ The U.S. has carried this commitment forward, most recently in signing the New Urban Agenda, the outcome report of the 2016 U.N. Habitat III conference.⁹¹ The signatories “commit to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low income groups, and persons with disabilities ... including supporting the social production of habitat, according to national legislations and standards.”⁹² Rather than helping to progressively realize the right to adequate housing, as discussed above, the proposed rule is a retrogressive step that will undermine our implementation of these commitments, damaging lives at home and our reputation abroad.

V. CONCLUSION

According to the DHS, the proposed rule’s revision of public charge determinations seeks to “establish a clear framework” under which the DHS can determine whether an immigrant is likely to become a public charge in the future. However, as the issues highlighted in this letter demonstrate, the proposed rule lacks clarity in significant respect and, if implemented, will further distort and undermine the framework established under the 1999 guidelines. We therefore urge DHS to immediately withdraw the proposed rule and dedicate its efforts to advancing policies that strengthen the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

One fundamental flaw of the proposed rule is that it is unsupported by evidence. The proposed rule is the product of agency speculation and not scientific or fact-based investigation. Its assumption that accessing certain public benefits is a reliable predictor of future dependence on the government for the necessities of life is at odds with actual and well documented experience with those benefit programs. The mere fact that some individuals who access these programs become public charges provides no basis for concluding that one who does so is likely to become a public charge. In fact, the overwhelming number of citizens and non-citizens who access these programs never become public charges. It is far more likely that they become productive contributors to our economy and public life.

⁹⁰ The Housing Act of 1949 (Title V of P.L. 81-171).

⁹¹ *UN conference agrees new urban development agenda creating sustainable, equitable cities for all*, UN Sustainable Development Blog (Oct. 20, 2016), <http://www.un.org/sustainabledevelopment/blog/2016/10/un-conference-agrees-new-urban-development-agenda-creating-sustainable-equitable-cities-for-all/>; Outcome document of the United Nations Conference on Human Settlements (Habitat III), Quito Declaration on Sustainable Cities and Human Settlements for All, Quito, October 17-20, 2016, ¶ 31, 33, 108 (2016) (hereinafter “New Urban Agenda”), https://www2.habitat3.org/bitcache/97ced11dcecef85d41f74043195e5472836f6291?vid=588897&disposition=in_line&op=view.

⁹² New Urban Agenda, *supra* note 49.

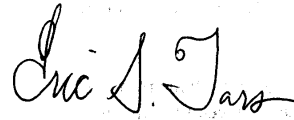
The other fundamental flaw is that the proposed rule is premised on the notion that providing benefits to immigrants is a net loss to this country, rather than an investment that will be returned many times over in the future. Ensuring the universal human rights of all our residents, including economic and social rights, enables us to live dignified lives and develop to our fullest potential, benefitting us all.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Eric Tars, 202-638-2535 x.120, etars@nlchp.org, for further information.

Sincerely,



Maria Foscarinis
Executive Director



Eric S. Tars
Legal Director