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*Submitted via www.regulations.gov*

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

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

Dear Chief Deshommès:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments in connection with the Department of Homeland Security's (DHS) above-referenced Notice of Proposed Rulemaking (hereinafter, NPRM) entitled, "Inadmissibility on Public Charge Grounds." CLINIC strongly opposes the proposed rule in its entirety and, for the reasons set forth below, request that the proposed rule be withdrawn.

Embracing the gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 330 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Over ninety percent of CLINIC's affiliates offer family-based immigration services, including assistance with applications for adjustment of status to lawful permanent residency.

CLINIC's attorneys conduct training and provide technical support on all of the immigration-related legal problems faced by low-income immigrants. The Training, Litigation and Support Section focuses on family-based immigration issues, including the issues surrounding adjustment of status. By the end of the third quarter for 2018, CLINIC attorneys trained 4,035 people online and in-person. Further, CLINIC's Religious Immigration Services (RIS) section specializes in assisting international religious workers and their U.S. organizational sponsors. RIS represents approximately 160 dioceses and religious communities throughout the U.S. and over 820 individual clients.<sup>1</sup>

U.S. immigration policy reflects the importance of family reunification. Of the 1,183,505 foreign nationals admitted to the United States in FY2016 as lawful permanent residents (LPRs), 804,793, or 68 percent, were

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<sup>1</sup> CLINIC, *Mid-year report to the board for 2018* (Nov. 2018).

admitted on the basis of family ties.<sup>2</sup> Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Accordingly, CLINIC supports immigration policies and procedures that promote and facilitate family unity and welcomes changes to the adjustment of status process that assist families in obtaining this immigration benefit. Unfortunately, this proposal is irreconcilable with our nation's values, as it would create unnecessary barriers to achieving the American Dream – a dream that was not intended to be limited to only the affluent. It is also contrary to our Catholic values and faith teachings, as it would negatively affect family unity, stability, and threaten public health.

Our values are best expressed by Pope John XXIII who wrote in *Pacem in Terris*, “Now among the rights of a human person there must be included that by which a man may enter a political community where he hopes he can more fittingly provide a future for himself and his dependents. Wherefore, as far as the common good rightly understood permits, it is the duty of that state to accept such immigrants and to help to integrate them into itself as new members.”<sup>3</sup> The proposed regulation would not only deprive immigrants of the support they need to integrate into our society successfully, it would exponentially harm families and communities.

In short, we oppose the rule for the following reasons:

- DHS has failed to provide appropriate justification and evidence-based reason for deviating from long-standing past practices
- DHS's proposal would bypass the legislative process required to change an established, 300-year definition of who is deemed a public charge
- DHS' proposal is contrary to legislative intent, case law, and the ordinary meaning of “public charge”
- DHS's proposal to include non-cash programs is contrary to public policy and would unnecessarily jeopardize public health, safety, and family stability
- DHS's proposal assigns weight to the various factors in a way that does not achieve the stated goal of immigrant self-sufficiency
- DHS' proposal to reestablish public charge bonds is unnecessary and burdensome
- DHS's proposal is counterproductive and would create tremendous burdens on USCIS, legal representatives, and immigrants

## **I. DHS's Proposal Lacks Justification and Evidence-based Reasoning**

On October 10, 2018, DHS published an NPRM that proposes to change the definition and scope of the public charge ground of inadmissibility.<sup>4</sup> The NPRM would change the current definition of public charge from one who is “primarily dependent” or relies on public benefits for more than 50 percent of their income and support, to a significantly lower threshold of using public benefits valued at 15 percent of the Federal Poverty Guideline. The NPRM would also change the scope of the public charge test, expanding it to applicants for extensions of nonimmigrant stay.

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<sup>2</sup> U.S. Congressional Research Service. U.S. Family-based Immigration Policy (R43145; Feb. 9, 2018), by William A. Kandel. Available at: <https://fas.org/sgp/crs/homsec/R43145.pdf>.

<sup>3</sup> Pope John XXIII. Encyclical Letter "Pacem in Terris: Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Charity, and Liberty" at para. 106, (April 11, 1963). Available at: [http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf\\_j-xxiii\\_enc\\_11041963\\_pacem.html](http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html)

<sup>4</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (proposed October 10, 2018) (to be codified at 8 CFR Parts 103, 212, 213, 214, 245 and 248) [hereinafter “NPRM”].

DHS does not state a reasonable explanation for deviating from its long-standing practices. The NPRM describes the current method of evaluating public charge, but does not provide any evidence that the results of this method have fallen short of the congressional intent of the underlying statute. The NPRM presents data regarding the number of noncitizens that use various public benefit programs, but DHS acknowledges that this data from the Survey of Income and Program Participation includes immigrant populations who receive benefits legally and are not subject to public charge inadmissibility.<sup>5</sup> DHS does not present any internal data to demonstrate that its current adjudications are not reliably determining applicants' likelihood to become a public charge.

The NPRM also acknowledges that other agencies including HHS and IRS use the same 50 percent standard to determine dependency, but then states DHS's conclusory "belief" that receiving even small amounts of benefits for a short duration renders one a public charge.<sup>6</sup> Under the Administrative Procedure Act (APA) and its associated case law, an agency action is deemed "arbitrary and capricious"<sup>7</sup> if it does not "articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'"<sup>8</sup> As described above, DHS's omission of internal evidence of adjudicatory shortcomings due to the current public charge policy, and its conclusory decision to propose a new definition despite opposing evidence, call into question its consistency with the APA.

Since there is no rational or evidence-based reason provided in the NPRM for issuing this proposed regulation, stakeholders must resort to considering the policy context surrounding the proposal to determine a reasonable explanation for this action. This administration has taken the following actions to reduce family immigration or separate families present in the United States:

- On January 26, 2017, less than a week after taking office, the President issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S. citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.
- On September 7, 2017, it terminated the Deferred Action for Childhood Arrivals (DACA) program, which threw approximately 700,000 residents into legal limbo. By March 5, 2018, more than 20,000 DACA recipients had already lost this protection. When the Senate introduced a bill that month that would have remedied the situation, the president said he would only support legislation that included funding for the Mexican border wall, increased enforcement personnel, elimination of the Diversity Visa Lottery program, and a vastly reduced family-based immigration process.
- On October 4, 2017, the administration capped the number of refugee admission for Fiscal Year 2018 at 45,000, which was the lowest number since Congress created the current refugee program in 1980. But due to the implementation of new security screening requirements ("extreme vetting"), a three-month suspension of refugee admissions in the beginning of that fiscal year, and other slow-downs in refugee processing, only 22,491 were actually admitted. On September 24, 2018, the administration capped the number of refugees for Fiscal Year 2019 at 30,000—a one-third reduction of the previous official number—during the worst global displacement and refugee crisis since World War II.

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<sup>5</sup> Notice of Proposed Rulemaking (NPRM) at 51160.

<sup>6</sup> NPRM at 51164.

<sup>7</sup> 5 U.S.C. § 706.

<sup>8</sup> *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.* 463 U.S. 29, 43 (1983).

- Over a six-month period, the administration formally terminated Temporary Protected Status (TPS) for six countries—Sudan, Nicaragua, Nepal, Haiti, El Salvador and Honduras—affecting over 300,000 people. Most of these immigrants have built strong ties to the United States over many years and have little or nothing to return to. The two largest populations of TPS holders, from El Salvador and Honduras, have been living in the United States for more than 20 years. An estimated 270,000 U.S. citizen children have parents who are TPS holders from just three countries: El Salvador, Honduras and Haiti. These terminations—when they take effect and are enforced—will leave TPS holders with a Hobbesian choice: abandon their children and return to their home countries alone, or relocate with them and subject them to high levels of crime, violence and poverty.
- In April 2018, the administration began a “Zero Tolerance” policy that led to the Department of Homeland Security (DHS) separating asylum-seeking parents from their children. This policy affected both families who presented themselves at a port of entry and those who entered unlawfully between ports of entry. While the parents were being prosecuted for illegal entry, immigration authorities took their children from them, sometimes under false pretenses, and refused to tell them where they were going. In fact, the administration made little or no effort to even keep track of where the children were being placed, which came to light after a court stepped in and ordered that the families to be reunited. Approximately 3,000 children were separated from their parents during this humanitarian crisis created by the administration and an estimated 200 remain separated.

In addition, throughout his campaign and time in office, President Trump has made clear his intent to limit the number of immigrants from developing countries. He has made blanket statements regarding migrants arriving in the United States from developing countries: “[T]hey’re not sending their finest. We’re sending them the hell back.”<sup>9</sup> With respect to migrants fleeing violence and grinding poverty in Guatemala, El Salvador and Honduras and traveling north through Mexico, the president had these comments: “These are tough, tough people, and I don’t want them, and neither does our country.”<sup>10</sup>

Shortly after President Trump’s inauguration in January 2017, an official within his administration leaked a draft of an Executive Order titled “Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility.”<sup>11</sup> The Executive Order instructed DHS to “rescind any field guidance” and “propose for notice and comment a rule that provides standards for determining which aliens are inadmissible or deportable on public charge grounds”—*i.e.*, if a non-citizen is “likely to receive” or does receive means-tested “public benefits.”<sup>12</sup> Although the draft Executive Order was never officially released or signed by President Trump, it is now being implemented through this NPRM.

It is against this policy backdrop that this administration has now proposed changing the way the public charge ground of inadmissibility has been defined and interpreted for the last three centuries. Based on this voluminous restrictive policy record, DHS’s rationale for changing this regulation is not to promote self-

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<sup>9</sup> *Trump: ‘We’re Sending Them the Hell Back,’* NBC News (June 20, 2018), [www.nbcnews.com/video/trump-we-re-sending-them-the-hell-back-1260491331685?v=raila&](http://www.nbcnews.com/video/trump-we-re-sending-them-the-hell-back-1260491331685?v=raila&).

<sup>10</sup> Emily Cochrane, *Playing Up Support Among Hispanic Voters, Trump Takes Aim at Immigration Laws*, New York Times (October 20, 2018), [www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html](http://www.nytimes.com/2018/10/20/us/politics/trump-arizona-rally-immigration.html).

<sup>11</sup> See Memorandum from Andrew Bremberg Regarding Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility (Jan. 23, 2017), [www.nafsa.org/uploadedFiles/NAFSA\\_Dojo/Professional\\_Resources/Browse\\_by\\_Interest/International\\_Students\\_and\\_Scholars/DraftEOTaxprograms.pdf](http://www.nafsa.org/uploadedFiles/NAFSA_Dojo/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/DraftEOTaxprograms.pdf).

<sup>12</sup> *Id.* at 3.

sufficiency in immigrants, but rather, it is the latest effort to achieve the administration’s stated goal of reducing family immigration, especially given that federal courts have enjoined most of its prior attempts.

## II. DHS’ Proposed “Public Charge” Definition Contradicts its Centuries-old Definition

The first federal statute precluding the admission of aliens based on potential public charge was passed by the 47<sup>th</sup> Congress and signed into law on August 3, 1882,<sup>13</sup> three months after it had passed the infamous Chinese Exclusion Act.<sup>14</sup> It authorized the boarding of vessels, the examination of passengers, and the denial of permission to land “if on such examination there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge...”<sup>15</sup> Notable, however, was the deletion by the Senate of language passed by the House that would have excluded “all foreign paupers, convicts, or accused persons of other than political offenses, or persons suffering from mental alienation, in the United states who are a public charge on their arrival in this country...”<sup>16</sup> That language did not appear until 1891 when the federal government expanded the inadmissible classes to include “persons likely to become a public charge”<sup>17</sup> and also authorized the deportation of those who became a public charge within one year.

This language—likely to become a public charge—was in fact modeled on existing immigration laws and policies developed in New York and Massachusetts years earlier. Those two states helped mold the legal and administrative frameworks of what later became the federal authority for excluding indigent persons. Representatives from those two states actually played a central role in developing our national immigration policy and in drafting the Immigration Act of 1882. The enactment of that statute was motivated by the Supreme Court’s declaring that state passenger laws—the imposition of head taxes and the exclusion and deportation of certain classes of entrants—were unconstitutional and that only the federal government could impose such restrictions.<sup>18</sup>

Prior to that year, the regulation and control of immigrants lay largely within the jurisdiction of the states—not the federal government—and the enactment and enforcement of these laws took place at the local level. Statutes prohibiting the admission of poor and indigent immigrants date back to the colonies with the earliest laws being passed in Massachusetts in 1645.<sup>19</sup> A law in 1700, for example, targeted “lame, impotent, or infirm persons, incapable of maintaining themselves.”<sup>20</sup> That same colony enacted a law in 1722 that required the posting of a bond, not to exceed £100 and with a term of five years, that would be forfeited if the immigrant in question became a public charge.<sup>21</sup>

Similar laws were passed at that time in other Atlantic seaboard states, in addition to laws allowing for the deportation of those who had become indigent. For example, New York State passed a law in 1847 that prohibited the landing of “any lunatic, idiot, deaf and dumb, blind or infirm persons, not members of

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<sup>13</sup> Immigration Act of August 3, 1882, 22 Stat. 214.

<sup>14</sup> Immigration Act of May 6, 1882, 22 Stat. 58.

<sup>15</sup> *Id.*

<sup>16</sup> H.R. 6596, Section 4, p. 1506.

<sup>17</sup> Immigration Act of March 3, 1891, 26 Stat. 1084.

<sup>18</sup> *Chy Lung v. Freeman*, 92 U.S. 275 (1876).

<sup>19</sup> Albright, *Colonial Immigration Legislation*, p. 445.

<sup>20</sup> E.E. Proper, *Colonial Immigration Laws* (New York: Columbia University Press, 1900), p. 29.

<sup>21</sup> *Acts and Resolves of Massachusetts Bay*, vol. 2 (Boston: Wright and Porter, 1874), pp. 244-45.

emigrating families, and who . . . are likely to become permanently a public charge,” unless the shipmaster provided a bond for each affected passenger.<sup>22</sup>

The motivation for these laws derived from both financial concerns and cultural prejudice against the Catholic Irish. A disproportionate number of those who were excluded and deported were Irish women, especially those who were single, divorced, widowed, pregnant, or arriving with children, who were viewed as more economically vulnerable.

Federal legislation continued with a law in 1903 that raised the head tax on alien passengers, continued the exclusion of paupers and persons likely to become a public charge, and added “professional beggars” to the list of those barred entry.<sup>23</sup> Four years later a new provision added the excludability of those who are found to be “mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living.”<sup>24</sup> The 1917 Act altered the ground of exclusion slightly to cover “paupers; professional beggars; vagrants” and “persons likely to become a public charge,” while repeating the provision against those with a mental or physical defect.<sup>25</sup>

This public charge language remained unchanged for the next 35 years until the 1952 Act, which became the modern codification of immigration and naturalization law. For the first time, admissibility expanded to include not only those applying for an immigrant visa from abroad, but also those admitted as nonimmigrants who wished to adjust their status to legal permanent resident (LPR) within the United States. It also formalized the numerous nonimmigrant categories for those entering the United States on a temporary basis to visit, work, or study. The public charge provision included three potential groups: (1) those with a physical “defect, disease, or disability” that would “affect the ability of the alien to earn a living”; (2) those who are “paupers, professional beggars, or vagrants”; and (3) those “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, are likely at any time to become public charges.”<sup>26</sup> It is the language in this third section that has survived, almost verbatim, into current law, while the first two sections were subsequently deleted.

In 1953, a presidential commission expressed its concern over a lack of uniformity with State Department findings regarding public charge and “recommends that the immigration law provide that no alien should be deemed likely to become a public charge who (1) has a firm assurance of employment in the United States, and (2) has assurances furnished on his behalf by a responsible individual or organization in the United States that the alien will not become a burden on the community.”<sup>27</sup> Thereafter, the State Department, and later the INS, began asking immigrant visa applicants to submit a job offer from an employer in the United States and an affidavit of support, Form I-134, from a family member. Those affidavits were found to be legally unenforceable by several state courts,<sup>28</sup> thus motivating Congress in 1996 to mandate the creation of one that would be binding. In 1986, Congress passed the Immigration Reform and Control Act, which made it illegal for employers to hire workers who were not either citizens or authorized to work.

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<sup>22</sup> *Annual Reports of the Commissioners of Emigration of the State of New York: From the Organization of Commission, May 5, 1847, to 1860, Inclusive* (New York: John F. Trow, 1861).

<sup>23</sup> Act of March 3, 1903, 32 Stat. 1213.

<sup>24</sup> Act of February 20, 1907, 34 Stat. 898.

<sup>25</sup> Act of February 5, 1917, 39 Stat. 874.

<sup>26</sup> The Immigration and Nationality Act of 1952, Pub.L. 82-414, 66 Stat. 163, sections 212(a)(7), (8), and (15).

<sup>27</sup> “Whom We Shall Welcome: Report of the President’s Commission on Immigration and Naturalization” (1953), at pp. 190-91, available at <https://hdl.handle.net/2027/mdp.39015004969005>.

<sup>28</sup> *San Diego County v. Vilorio*, 276 Cal. App. 2d 350, 80 Cal. Rptr 869 (Cal. App. 1969); *Michigan ex rel. Attorney General v. Binder*, 356 Mich. 73, 96 N.W. 2d 140 (Mich. 1959); *California Dept. Mental Hygiene v. Renel*, 10 Misc.2d 402, 173 N.Y.S. 2d 231 (N.Y. App. Div. 1958).

The 1996 immigration law significantly tightened the public charge ground of inadmissibility affecting all family-based visa applicants and some employment-based applicants.<sup>29</sup> The law imposed four requirements:

- The petitioner in all family-based immigrant visa petitions must submit an affidavit of support on Form I-864 or I-864EZ
- The definition of a sponsor excludes anyone who is not a U.S. citizen, U.S. national, or lawful permanent resident (LPR), at least 18 years of age, and domiciled in the United States or a U.S. territory or possession<sup>30</sup>
- The sponsor must evidence “the means to maintain an annual income equal to at least 125 percent of the Federal poverty line,”<sup>31</sup> and
- The sponsor must agree to “provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty income line,” reimburse any federal or state agency that provides a means-tested benefit to the sponsored alien, agree “to submit to the jurisdiction of any Federal or State court” for enforcement of the affidavit, and inform the U.S. Citizenship and Immigration Services (USCIS) of any change of address.<sup>32</sup>

While anti-Irish nativism reached its peak in the mid-1800s, as evidenced by the Know-Nothing party and sporadic outbreaks of mob violence, the legislation that emerged from Massachusetts and New York at that time continued to expand for decades before it evolved into the statutory language at issue with this proposed federal rule change. Today’s targets, of course, are not the Irish Catholics but rather a wider swath of the world’s population who come from less developed countries, possess only modest skills and education, lack English proficiency or a formal credit rating, and seek only entry-level or manual labor positions in the economy. Catholic Church teachings opposed religious discrimination when the church itself was targeted, and it still opposes discrimination against those from developing nations as it conflicts with the Church’s support for the dignity of the human person.

As explained in these comments, what is being proposed by this regulation is a dramatic shift in purpose from its origins almost 300 years ago—from excluding the destitute, the famine-stricken, and those permanently relegated to almshouses—to a potential banning of those who simply lack formal educational degrees and whose income falls below the federal “affluence” level.<sup>33</sup> What remains imbedded in this history is a deep-rooted prejudice against those who comprise a certain racial, ethnic, or social underclass; what stands out now, however, is a demonstrated desire by this administration to reduce immigration levels from any countries that are not affluent.

### **III. DHS’s Proposal Oversteps the Boundaries of Regulation, Taking a Legislative Posture**

In the NPRM, the DHS justifies its change to the definition of public charge from “dependence” on three cash-assistance programs to “receipt” of any of eight cash and non-cash programs as “consistent with

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<sup>29</sup> Sec. 551 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009, codified in INA §§ 212(a)(4), 213A.

<sup>30</sup> INA § 213A(f)(1).

<sup>31</sup> INA § 213A(f)(1)(E).

<sup>32</sup> INA § 213A(a)(1).

<sup>33</sup> See [www.financialsamurai.com/what-is-considered-mass-affluent-definition-based-off-income-net-worth-investable-assets/](http://www.financialsamurai.com/what-is-considered-mass-affluent-definition-based-off-income-net-worth-investable-assets/) (“To be considered affluent by income, one must make at least 50% more than the median per capita GDP of your surrounding area. If you consider your surrounding area all of America, than you must earn at least \$67,000 a year individually since the per capita GDP in America is currently around \$45,000.”).

legislative history, case law, and the ordinary meaning of public charge.”<sup>34</sup> In fact, the agency’s proposed definition is at direct odds with all of them. First, legislative history, as explained above, evidences a very narrow definition of public charge, rather than the broad one proposed. Second, the ordinary meaning of the term of “public charge” follows the dictionary definition, which is “a person or thing committed or entrusted to the care, custody, management, or support of another.”<sup>35</sup> In other words, someone who receives a non-cash benefit intended to supplement their health or nutrition would not be understood to be “entrusted to the care” of the government. Indeed, an analysis of the history of the term for a prior proposed public charge regulation found that “[t]his primary dependence model of public assistance was the backdrop against which the “public charge” concept in immigration law developed in the late 1800s.”<sup>36</sup> Third, case law has consistently applied a restrained approach and confined its application to those who are primarily dependent on the government for survival.

The “long-standing legal presumption,” as interpreted by the State Department in 1998, has been that “an able-bodied, employable individual will be able to work upon arrival in the U.S.” and therefore that person is not likely to become a public charge.<sup>37</sup> The 1996 statutory change adding the affidavit of support requirement did not change that presumption.<sup>38</sup> The State Department interpretation encapsulates a significant body of judicial and administrative case law. The following is a brief summary of the more significant administrative cases interpreting the public charge ground of inadmissibility:

- *Matter of T—*,<sup>39</sup> where the BIA sustained the appeal of a mother and child who had been excluded on public charge grounds after their husband/father was excluded for having committed a crime involving moral turpitude. The mother and son sought permanent residence in the United States independent of the father, but were denied. In reversing this denial, the BIA noted that the mother was “quite capable of earning her own livelihood independent of her husband,” and the child had training in a field that represented “a wide field of employment for this country.”<sup>40</sup>
- *Matter of Martinez-Lopez*,<sup>41</sup> where the Attorney General held that “[some] specific circumstances, such as mental or physical disability, advanced age, or other facts reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.”<sup>42</sup>
- *Matter of Harutunian*,<sup>43</sup> where the BIA reaffirmed a “totality of the circumstances” test for grounds of inadmissibility, which included age, health, educational level, financial status, and family assets and support. This was consistent with the long-standing approach that considered an alien’s economic circumstances, as well as physical and mental conditions. Applying this test, the BIA found that immigration officials had properly determined that the applicant was ineligible for

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<sup>34</sup> NPRM at 51157.

<sup>35</sup> Webster’s Third New Int’l Dictionary of the English Language 377 (1986).

<sup>36</sup> *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676 (May 26, 1999).

<sup>37</sup> Department of State, “I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance,” UNCLAS STATE 102426 (June 1998).

<sup>38</sup> *Id.* (“Moreover, the new AOS requirements have not changed the long-standing legal presumption...”).

<sup>39</sup> 3 I&N Dec. 641 (BIA 1949).

<sup>40</sup> *Id.* at 644.

<sup>41</sup> 10 I&N Dec. 409 (AG 1964).

<sup>42</sup> *Id.* at 421-22.

<sup>43</sup> 14 I&N Dec. 583 (BIA 1974).

adjustment of status on public charge grounds. She was aged (70 years old), unskilled, uneducated, without family or other support, and had been on welfare since her arrival in the United States.

- *Matter of Vindman*,<sup>44</sup> where the BIA examined “everything in the statutes, the legislative comments, and prior decisions” and found that they “point to one conclusion, that Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him, and whose chances of becoming self-supporting decrease as time passes.”<sup>45</sup> Applying this test, the Board found that the couple had properly been found excludable for public charge given their age (66 and 54 years old), their unemployment and lack of employment prospects, their dependence on Federal and state cash assistance programs for the last three years, and the absence of any family member who could contribute to their support.
- *Matter of A—*,<sup>46</sup> where the BIA sustained an alien’s appeal of a decision finding her ineligible for adjustment of status on public charge grounds. The INS district director had determined that the alien was ineligible because the alien’s family had received “public cash assistance” for nearly four years, and neither the alien nor her spouse had worked for four years prior to filing the application for adjustment of status. The district director thus viewed the alien as “unable to support herself and her family without public assistance.”<sup>47</sup> The Board, however, disagreed, noting that the alien was “young” and had no “physical or mental defect which might affect her earning capacity.” It also noted that the alien had recently begun working, and that during the time when she was absent from the workforce, she had been caring for her children.

Memoranda from the Department of State and INS interpreting the statutory changes following the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”)<sup>48</sup> and the implementation of the new affidavit of support requirements are also illustrative. The following convey the agencies’ analysis and application of the public charge ground shortly after passage of IIRIRA:

- “In most cases, the public charge requirements will be satisfied by the submission of a verifiable Affidavit of Support that meets the 125 percent minimum income requirement...A finding of ineligibility in cases where the 125 percent minimum has been met must be well-documented and demonstrate a clear basis for the determination that the applicant is likely to become a public charge.”<sup>49</sup>
- “If there is a sufficient Affidavit of Support and the applicant appears to be able to support him/herself and dependents, a public charge finding may not be appropriate notwithstanding the petitioner’s reliance on public assistance.”<sup>50</sup>
- “It is important to note that public charge provisions are generally forward looking and findings of ineligibility should be based on the likelihood of the applicant becoming a public charge...There is

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<sup>44</sup> 16 I&N Dec. 131 (BIA 1977).

<sup>45</sup> *Id.* at 132.

<sup>46</sup> 19 I&N Dec. 867 (BIA 1988).

<sup>47</sup> *Id.*

<sup>48</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. 104–208, 110 Stat. 3009-546, enacted September 30, 1996.

<sup>49</sup> Department of State, “I-864 Affidavit of Support Update No. One – Public Charge Issues,” UNCLAS STATE 228862 (Dec. 1997).

<sup>50</sup> *Id.*

no ground of ineligibility based solely on the prior receipt of public benefits... Thus in most cases, prior receipt of benefits, by itself, should not lead to an automatic finding of ineligibility. Prior receipt of public benefits is a factor which may be considered in making public charge determinations, along with evidence of the applicant's current financial situation and the sponsor's ability to provide support."<sup>51</sup>

- “Consular officers must base their determination of the likelihood that the applicant will become a public charge on a reasonable future projection of the alien’s present circumstances. Consular officers should point to circumstances which make it not merely possible, but likely that the applicant will become a public charge, as defined in N.1, above. Consular officers must not, however, refuse a visa by asking ‘What if’ type questions, e.g., ‘What if the applicant loses the job before reaching the intended destination’, or ‘What if the applicant is faced with a medical emergency.’ Instead consular officers must assess only the ‘totality of the circumstances’ existing at the time of visa application.”<sup>52</sup>
- “Except for the new requirements concerning the enforceable affidavit of support, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has not altered the standards used to determine the likelihood of an alien to become a public charge nor has it significantly changed the criteria to be considered in determining such a likelihood. The law remains that all aliens seeking admission are inadmissible, and themselves subject to removal under the provisions of section 212(a)(4), if they are likely at any time to become public charges.”<sup>53</sup>

In 1999, the Immigration and Naturalization Service (INS) published in the Federal Register a Notice of Proposed Rulemaking that defined the public charge ground of inadmissibility.<sup>54</sup> INS determined that the rule was necessary to reduce public confusion about the meaning of public charge and noted that it had been contacted by “many State and local officials, Members of Congress, immigrant assistance organizations, and health care providers who are unable to give reliable guidance to their constituents and clients on this issue.”<sup>55</sup> As the INS explained:

Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a “public charge.” This tension between the immigration and welfare laws is exacerbated by the fact that “public charge” has never been defined in statute or regulation. Without a clear definition of the term, aliens have no way of knowing which benefits they may safely access without risking deportation or inadmissibility.<sup>56</sup>

INS stressed that when aliens are deterred or prevented from using a wide array of public benefits, local communities bear the costs. It explained:

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<sup>51</sup> *Id.*

<sup>52</sup> Department of State, “INA 212(A)(4) Public Charge: Policy Guidance,” REF: 9 FAM 40.41 (May 1999).

<sup>53</sup> Immigration and Naturalization Service, Office of Programs, “Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits” (Dec. 16, 1997).

<sup>54</sup> Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28,676 (May 26, 1999).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

According to Federal and State benefit-granting agencies, this growing confusion is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children’s immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who decline immunization services increase. Concern over the public charge issue is further preventing aliens from applying for available supplemental benefits, such as child care and transportation vouchers, that are designed to aid individuals in gaining and maintaining employment.<sup>57</sup>

Rulemaking was necessary because, “[i]n short, the absence of a clear public charge definition is undermining the Government’s policies of increasing access to health care and helping people to become self-sufficient.”<sup>58</sup> INS proposed to define “public charge” to mean an individual “who is likely to become ... primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.”<sup>59</sup>

This definition was consistent with the advice provided by federal benefit-granting agencies, including the Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration. Each concurred that “receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government” because “non-cash benefits generally provide supplementary support ... to low-income working families to sustain and improve their ability to remain self-sufficient.”<sup>60</sup>

In addition to publishing the proposed rule, INS also published its Field Guidance on the public charge issue, “which both summarize[d] longstanding law with respect to public charge and provide[d] new guidance on public charge determinations.”<sup>61</sup>

The Field Guidance was published alongside the 1999 proposed rule to “help alleviate public confusion over the meaning of the term ‘public charge’ in immigration law and its relationship to the receipt of Federal, State, and local public benefits” and to “provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.”<sup>62</sup> In promulgating the Field Guidance, INS intended to adopt its definition of public charge “immediately, while allowing the public an opportunity to comment on the proposed rule.”<sup>63</sup>

To that end, the Field Guidance adopted the same definition of public charge stated in the proposed rule. Specifically, INS defined a “public charge” as “an alien who has become ... or is likely to become 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.”<sup>64</sup>

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<sup>57</sup> *Id.* at 28,676-77.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 28,677.

<sup>60</sup> *Id.*

<sup>61</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> 64 Fed. Reg. at 28,681.

In publishing the 1999 proposed rule and the Field Guidance, INS expressly took “into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.”<sup>65</sup> Moreover, INS specifically acknowledged that its definition of public charge conformed to the policy “codif[ied] ... in the Foreign Affairs Manual,” and described it as “taking a similar approach.”<sup>66</sup> Once again, INS defended its parallel interpretations as adopting “uniform standards.”<sup>67</sup>

INS also clarified that “[i]t has never been Service policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge.”<sup>68</sup> Instead, INS stressed that “[t]he nature of the public program must be considered.”<sup>69</sup> “For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, or receiving emergency medical care would not make an alien inadmissible as a public charge, despite the use of public funds.”<sup>70</sup>

INS gave four reasons for deciding to adopt the definition of public charge in both the 1999 proposed rule and the Field Guidance. First, INS noted that “confusion about the relationship between the receipt of public benefits and the concept of ‘public charge’” had “deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive.”<sup>71</sup> As INS explained, this “reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.”<sup>72</sup>

Second, INS observed that non-cash benefits “are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family.”<sup>73</sup> Thus, by focusing only on cash assistance for income maintenance, the Service could “identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests.”<sup>74</sup>

Third, INS acknowledged that “federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient.”<sup>75</sup> INS therefore concluded that “participation in such non-cash programs is not evidence of poverty or dependence.”<sup>76</sup>

Fourth, INS concluded that in light of the “complex” rules governing eligibility for federal, state, and local public benefits, “INS Officers are not expected to know the substantive eligibility rules for different public benefit programs.”<sup>77</sup> Limiting the types of programs considered for public charge purposes would therefore

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<sup>65</sup> 64 Fed. Reg. at 28,692.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

produce “simpler and more uniform” public charge determinations, “while simultaneously providing greater predictability to the public.”<sup>78</sup>

INS did not anticipate that adopting the 1999 definition of “public charge” would “substantially change the number of aliens who will be found deportable or inadmissible as public charges” primarily because “under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits.”<sup>79</sup>

INS instructed officers to “not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.”<sup>80</sup>

INS then provided a non-exclusive list of non-cash benefit programs and stated clearly that “past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge.”<sup>81</sup> That list included Medicaid, food stamps (SNAP), and housing benefits, which the NPRM proposes adding to the totality of the circumstances test.

As for the affidavit of support, INS acknowledged that the Form I-864 “asks whether the sponsor or a member of the sponsor’s household has received means-tested benefits within the past 3 years.”<sup>82</sup> However, INS clarified that “[t]he purpose of this question is not to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met.”<sup>83</sup> INS therefore specified that “[a]ny cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold,” but that the “receipt of other means-tested benefits, such as Medicaid, is not disqualifying for sponsorship purposes.”<sup>84</sup>

As demonstrated above, the current implementation of public charge policy applies to those who are likely to primarily rely on the government for survival, intentionally excluding from consideration lesser amounts and non-cash benefits, which maintain public health and wellbeing, and assist people to maintain self-sufficiency. This current policy is supported by legislative history, case law, and the ordinary definitions of the terms in question.

#### **IV. Inclusion of Non-Cash Programs Would Harm Immigrants, Families, and the Public**

Over the last several decades, Department of Health and Human Services, the Department of Agriculture, and the Social Security Administration have concluded that the past, current, or anticipated future receipt of non-cash benefits, such as the Supplemental Nutrition Assistance Program (“SNAP,” previously referred to as “food stamps”) and Medicaid, by an intending immigrant or a member of his or her household, should not be considered for purposes of the public charge determination. They reasoned that such an approach helps to bolster overall public health, nutrition, and economic growth.

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 28,693.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

The NPRM proposes the addition of six non-cash benefits that it would consider as part totality of the circumstances test, either received by the applicant or likely to be received in the future: nonemergency Medicaid, Premium and Cost Sharing Subsidies for Medicare Part D, SNAP, Section 8 Housing Assistance and Project-Based Rental Assistance, and Subsidized Public Housing.

CLINIC opposes the addition of these programs for the following reasons:

- The inclusion of Medicaid would jeopardize the health care safety net and undermine nation’s public health and patient access to care.
- The inclusion of three housing programs—Section 8 Housing Choice Vouchers, Section 8 Project Based Rental Assistance and Public Housing—would exacerbate an already critical problem in this country. Lack of access to affordable housing is one of the main barriers to economic stability. Access to affordable housing provides stability for families, including mixed-status families with U.S. citizen children who will achieve more and grow up healthier with housing security. It also increases self-sufficiency by facilitating residency near areas with more employment opportunities.
- The inclusion of SNAP would reverse a 20-year-old interpretation of public charge that specifically excluded this program as part of the totality of the circumstances analysis. The reasoning was sound at the time and should not be overturned now. In addition to harming low-income children and other family members, it would hurt local retailers. For instance, in 2017, more than \$22.4 million in SNAP benefits were spent at farmers markets. Many small farmers, farm workers, and their families are beneficiaries of SNAP, meaning they would be hit doubly hard.

As a Catholic organization, we reject the social disdain expressed by this proposed regulation that would force families to reject aid during difficult times, or else lose the inclusion, integration, and opportunities that come with improved immigration status. We are called to welcome the stranger, but this regulation would withhold that welcome from those who are not affluent.

## **V. DHS’s Proposal is Precluded by Existing Legislative Provisions**

The driving force behind the DHS’s proposed regulation appears to be based on a concern that the measures put in place by Congress to implement its statutes on immigrants’ eligibility for benefits and the financial responsibility of sponsors are not being properly enforced. These concerns include enforcement of sponsor-to-alien deeming, sponsor reimbursement obligations, and LPRs’ access to public benefits not restricted by statute.

Rather than addressing these specific concerns through stepped-up enforcement of existing laws or legislative efforts to further restrict LPRs’ access to public benefits, DHS seeks to re-define public charge in a way that would make it more difficult for applicants who are not affluent to ever become LPRs. In short, the agency’s action does not address its claimed concerns, but instead has the effect of disproportionately reducing immigration from less developed countries. Or, in other words, it is proceeding as if the most efficient and effective way of reducing low-income immigrants’ potential access to cash and non-cash programs is to simply bar them from ever becoming LPRs.

In addition to the above concerns, the NPRM also suggests that under the current public charge policy the Affidavit of Support is accorded too much weight, and should be considered just one of the factors to be

considered in the totality of the circumstances, not even a heavily-weighted positive factor.<sup>85</sup> There are excellent reasons why the affidavit of support has been given “great weight” in determining public charge inadmissibility and why “in many cases, the affidavit will be enough to issue a visa.”<sup>86</sup> By executing Form I-864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the contract has terminated. The sponsor also agrees to reimburse any agencies that provide means-tested public benefits to a sponsored immigrant. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This is why the State Department issued the following statement in a cable to all diplomatic and consular posts six months after the affidavit of support was implemented:

Department notes that for several reasons a properly filed, non-fraudulent I-864 shall normally be considered sufficient to overcome the 212(a)(4) requirements. The I-864 is a legally enforceable contract, and therefore shall be granted significantly more evidentiary weight than the previous [Form I-134] affidavit of support. . . . The presumption that the applicant will find work coupled with the fact that the I-864 is a legally enforceable contract will provide in most cases a sufficient basis to accept a sponsor’s or a joint sponsor’s technically sufficient [affidavit of support] as overcoming the public charge ground.<sup>87</sup>

Undocumented immigrants residing in the United States are ineligible for federal or state cash benefits. They are also ineligible for non-cash benefits, except in limited circumstances, such as emergency Medicaid or the Special Supplemental Program for Women, Infants, and Children (WIC). After the applicant for adjustment of status or an immigrant visa obtains LPR status, he or she remains barred from means-tested federal or state benefits for a five-year period, except in those states that have elected to provide eligibility with their state funding. If the LPR applies for these benefits, the sponsor’s income will be deemed to him or her, which usually renders the applicant financially ineligible. This sponsor-to-alien deeming lasts for as long as the affidavit of support is in effect. These preclusions and requirements are set forth in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,<sup>88</sup> and in IIRIRA. This explains the INS concluding that:

“First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of receiving such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charges screening in any case in light of the section 101(a)(13)C) and the statutory exceptions.”<sup>89</sup>

There is a very large body of research and guidance demonstrating the long-term understanding that LPRs have been rendered ineligible for practically any of the benefits that would subject them to risk of becoming

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<sup>85</sup> NPRM at 51177-51178; 51197-51198.

<sup>86</sup> “I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance, UNCLAS STATE 102426 (June 1998).

<sup>87</sup> *Id.*

<sup>88</sup> P.L. 104-193, title IV, §§ 401-435, 110 Stat. 2261-2276 (Aug. 22, 1996) (generally codified, as amended, in 8 USC §§ 1601-1646).

<sup>89</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28692 (May 26, 1999).

a public charge through direct preclusion or through deeming. And further, when Congress made affidavits of support legally enforceable, they were intentionally bestowed with the power to ensure that if applicants fall on hard times, they would be legally dependent on their sponsors rather than the government.

## **VI. DHS' Proposal to Deemphasize Affidavits of Support Would Not Achieve the Goal of Immigrant Self-Sufficiency**

As mentioned in the previous section, a central premise of the agency's proposed regulation is that the USCIS has not placed enough weight on the five statutory factors set out in INA § 212(a)(4)(B) and has instead put too much emphasis on the affidavit of support.<sup>90</sup> But the agency historically has had the power to examine—and in fact has examined—multiple factors in determining the likelihood that an adjustment of status applicant would become a public charge. The 1996 statutory change merely codified the agency's prior policy and practice. The NPRM is not an attempt to flesh out and clarify these factors, but rather to impose additional requirements not intended by Congress. It is akin to DHS attempting to adopt a point system—giving certain weight to various factors—such as that used in Canada and other countries when evaluating eligibility to immigrate. Such a point system has so far been rejected by Congress.

The five factors that were added to the statute in 1996 were not new at that time and did not need to be explained or described more than they have been. They were lifted directly from prior INS instructions and the State Department Foreign Affairs Manual (FAM). For example, the State Department FAM in 1991 enumerated the “Factors in Reviewing Public Charge Requirements.”<sup>91</sup> They were listed as the applicant's: age<sup>92</sup>; health<sup>93</sup>; education<sup>94</sup>; family status<sup>95</sup>; financial resources<sup>96</sup>; and personal income.<sup>97</sup> In other words, when Congress in 1996 enacted INA § 212(a)(4)(B), Factors to be Taken into Account, it was simply repeating in statutory format what was already current practice. When it crafted the five statutory factors, it kept the words “age,” “health,” and “education” from the FAM; it added the words “and skills” to “education”; and it combined “financial resources” and “personal income” into “assets, resources, and financial status.”

After INS and the State Department implemented INA § 213A, which required the applicant to submit a legally-enforceable affidavit of support, it continued to consider the five factors set forth in 212(a)(4)(B). The affidavit of support was simply an additional requirement, albeit a mandatory one.

The Department of State summarized its final regulation implementing the 1996 statutory change in the following way: “The rule makes clear that although Form I-864 is a necessary part of certain immigrant visa applications, it is not, in and of itself, wholly adequate to find that an applicant satisfies the public charge requirements. It is a threshold requirement necessary to begin public charge considerations, but it is not an end.”<sup>98</sup> The addition of the five statutory factors appeared to add more complexity to the public charge

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<sup>90</sup> “Although INS issued a proposed rule and Interim Field Guidance in 1999, neither the proposed rule nor the Interim Field Guidance sufficiently described the mandatory factors or explained how to weigh these factors in the public charge inadmissibility determination.” NPRM at 51123.

<sup>91</sup> 9 FAM 40.41 Notes N2.1 (8/26/91).

<sup>92</sup> 9 FAM 40.41 Notes N2.2 (8/30/87).

<sup>93</sup> 9 FAM 40.41 Notes N2.3 (8/30/87).

<sup>94</sup> 9 FAM 40.41 Notes N2.4 (8/30/87).

<sup>95</sup> 9 FAM 40.41 Notes N2.5 (8/30/87).

<sup>96</sup> 9 FAM 40.41 Notes N3 (8/30/87).

<sup>97</sup> 9 FAM 40.41 Notes N3.4 (8/26/91).

<sup>98</sup> 64 Fed. Reg. 50752 (September 20, 1999) (finalizing 22 CFR Part 40).

determination, but in reality they added “no change in this respect ... since public charge determinations historically have contemplated numerous factors.”<sup>99</sup>

The State Department guidance pre-IIRIRA confirms that the agency had been employing these statutory factors when weighing potential public charge inadmissibility. The pre-IIRIRA FAM included the following interpretation of what became the five statutory factors:

- “The age of the applicant should be taken into consideration. If the applicant is under the age of 16, the support of a sponsor will be needed. On the other hand, if the applicant is 16 years or older, any skills employable in the United States should be considered.”<sup>100</sup>
- “The determination made by the panel physician regarding the applicant’s health should also be considered, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully.”<sup>101</sup>
- A review of the education or work experience of the applicant should be made to determine if these are compatible with the duties of the job offer. The applicant’s skills, length of employment, and frequency of job changes should also be considered. In instances in which a job offer is not involved, the above factors are relevant to assessing the likelihood of the alien’s ability to become self-sufficient, if necessary, within a reasonable time after entry into the United States.”<sup>102</sup>
- “Marital status and the number of dependents for whom the applicant would have financial responsibility should also be taken into consideration.”<sup>103</sup>
- “An alien who is relying solely on personal financial resources for support after admission into the United States may establish the adequacy of such resources by submitting evidence of bank deposits, ownership of property or real estate, ownership of stocks and bonds, insurance policies, or income from business investments.”<sup>104</sup>
- “An alien relying solely on personal income for support of self and dependent family members after admission should be presumed ineligible for an immigrant visa under 212(a)(4) unless such income, including that to be derived from prearranged employment, will equal or exceed the poverty income guideline level for the alien’s family size. The consular officer should refer to the most recent poverty income guideline table published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. When considering this factor for the purpose of evaluating the prospective income against the poverty income guideline levels, consideration should be given to any other considerations which indicate or suggest that the applicant will probably become a public charge. Normally all accompanying dependent family members and other dependent family members already in the United States are considered to be within the family unit for purposes of applying the poverty income guidelines. However, an applicant seeking to join a lawfully admitted permanent resident and two citizen children in the United States who are

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<sup>99</sup> *Id.*

<sup>100</sup> 9 FAM 40.41 N2.2 (1993).

<sup>101</sup> 9 FAM 40.41 N2.3 (1993).

<sup>102</sup> 9 FAM 40.41 N2.4 (1993).

<sup>103</sup> 9 FAM 40.41 N2.5 (1993).

<sup>104</sup> 9 FAM 40.41 N3 (1993).

receiving public assistance may be determined eligible under the public charge provision even though the applicant's prospective income will be below that shown in the poverty income guideline table for a family of four if the applicant's prospective income will exceed that shown on the poverty income guideline for a single person. There would be no question about the applicant's personal eligibility with respect to INA 212(a)(4) in such a situation. It is also quite possible that the admission of the alien and the alien's income in the United States may permit the lowering of the public assistance benefits the family now receives."<sup>105</sup>

The FAM had to be updated after IIRIRA imposed the legally enforceable affidavit of support and outlawed the hiring of immigrants who were not work authorized. For example, the focus necessarily shifted away from the intending immigrant's future employability and onto the sponsor and his/her ability to maintain the immigrant at 125 percent of poverty. In addition, employers were no longer willing to sign job offers, and the agency made their submission optional. Nevertheless, the FAM from at least 2003 up until January 3, 2018<sup>106</sup> included the following interpretation of what became the five statutory factors:

"When considering the likelihood of an applicant becoming a 'public charge,' consular officers must take into account, at a minimum, the five factors specified in INA 212(a)(4)(B) [see 9 FAM 40.41 N4] (in addition to any required affidavit of support), in order to base the determination on the totality of the alien's circumstances at the time of the visa application."<sup>107</sup>

"In making a determination whether an applicant is inadmissible under INA 212(a)(4)(B), a consular officer must consider, at a minimum the alien's: (1) Age; (2) Health; (3) Family status; (4) Assets; (5) financial status and resources; and (6) Education or skills. These factors, and any other factors thought relevant by a consular officer in a specific case, will make up the "totality of the circumstances" that the officer must consider when making a public charge determination. As noted in 9 FAM 40.41 N3.2, a properly filed, non-fraudulent Form I-864, Affidavit of Support Under Section 213A of the Act, in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the "totality of the circumstances" analysis. Nevertheless, the factors cited in 9 FAM N4 above could be given consideration in an unusual case in which a Form I-864 has been submitted and should be considered in non Form I-864 cases."<sup>108</sup>

The agency defined the "health" factor as follows:

"Consular officers must take into consideration the panel physician's report regarding the applicant's health, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully."<sup>109</sup>

The agency defined the "family status" factor as follows:

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<sup>105</sup> 9 FAM 40.41 N3.4 (1993).

<sup>106</sup> On January 3, 2018, the State Department, with no opportunity for public notice and comment, changed its agency's interpretation of the public charge ground of inadmissibility to mirror many of the DHS's proposed changes in the NPRM.

<sup>107</sup> 9 FAM 40.41 N2(b) (2017).

<sup>108</sup> 9 FAM 40.41 N4(a)-(b) (2017).

<sup>109</sup> 9 FAM 40.41 N4.2 (2017).

“Consular officers should consider the marital status of the applicant and, if married, the number of dependents for whom he or she would have financial responsibility.”<sup>110</sup>

The agency defined the “age” factor as follows:

“Consular officers should consider the age of the applicant. If the applicant is under the age of 16, he or she will need the support of a sponsor. If the applicant is 16 years of age or older, consular officers should consider what skills the applicant has to make him or her employable in the United States.”<sup>111</sup>

The agency defined the “education and work experience” factor as follows:

“Consular officers should review the applicant's job offer (if any). Consular officers should consider the applicant's skills, length of employment, and frequency of job changes. Even if a job offer is not required, consular officers should assess the likelihood of the alien's ability to become or remain self-sufficient, if necessary, within a reasonable time after entry into the United States”<sup>112</sup>

The agency defined the “financial resources” factor when an I-864 is required as follows:

“An alien who must have Form I-864, Affidavit of Support Under Section 213(A) of the Act, will generally not need to have extensive personal resources available unless considerations of health, age, skills, etc., suggest the likelihood of his or her ever becoming self-supporting is marginal at best. In such cases, of course, the degree of support that the alien will be able and likely to provide becomes more important than in the average case.”<sup>113</sup>

## **VII. Specific Comments Regarding Proposed Definitions of the Five Statutory Factors**

CLINIC opposes the DHS's proposed prioritization of the five statutory factors over the affidavit of support for the above reasons. The focus should remain on the sponsor and the ability of that person to maintain the intending immigrant at 125 percent of poverty. It should maintain the policy of prioritizing this legally-binding contract and should look at the five factors only in “unusual cases.”<sup>114</sup> CLINIC provides the following specific comments regarding each of the proposed definition of the five factors.

### **a. Age**

The NPRM states that applicants under 18 are “more likely to qualify for and receive public benefits”<sup>115</sup> and their age is therefore “a negative factor,” “unless [the applicants is] working or has adequate means of support.”<sup>116</sup> As support, DHS cites the U.S. Census Bureau that indicated that “18 percent of persons under the age of 18” lived below the poverty line and that “persons under the age of 18 were more likely to receive means-tested benefits than all other age groups.”<sup>117</sup>

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<sup>110</sup> 9 FAM 40.41 N4.3 (2017).

<sup>111</sup> 9 FAM 40.41 N4.4 (2017).

<sup>112</sup> 9 FAM 40.41 N4.5 (2017).

<sup>113</sup> 9 FAM 40.41 N4.6 (2017).

<sup>114</sup> 9 FAM 40.41 N4(a)-(b) (2017).

<sup>115</sup> NPRM at 51180.

<sup>116</sup> NPRM at 51180.

<sup>117</sup> NPRM at 51180.

CLINIC objects to this reasoning. First, the percentage of children under 18 who live in poverty has no meaning unless it is compared directly to other age groups. Is 18 percent high or low, for example, when compared with those between the ages of 18 and 36? Or is it within the normal expected range? Second, there is no breakdown for citizens and LPRs under the age of 18 who live in poverty. If the U.S. Census Bureau had indicated, for example, that LPR children are more likely to live in poverty than U.S. citizen children, then the statistic might have some meaning. Third the U.S. Census Bureau reports are not measuring the percentage of non-citizens under the age of 18 versus their citizen counterparts' receipt of means-tested programs. DHS is ignoring the fact that most LPRs are disqualified from receiving means-tested benefits for at least the first five years after immigrating. So to say that children under 18 are more likely to receive benefits doesn't speak to the likelihood of LPR children's receiving benefits; the question is not whether all children are likely to receive benefits, but rather whether children applying for LPR status will. Finally, it is axiomatic that children in their first years of life are more vulnerable and thus prone to qualify for means-tested benefits, such as SNAP and health care. But that has no applicability to a 15-year-old's likelihood of qualifying for benefits after immigrating. The DHS cites no authority for its assertion that applicants who obtain LPR status are more likely to become public charges simply due to their being under 18 years of age at the time of application.

For decades, the State Department has used the age of 16 as the cut-off for when the child be able to show employable job skills. With this NPRM, the agency is unilaterally raising the age to 18, without providing any justification to the change.

Similarly, the age of applicants 61 years and over is presumed to be "a negative factor," unless the applicants is "working or has adequate means of support."<sup>118</sup> The DHS provides the following justification: "11.8% of noncitizens age 62 and older received SSI, TANF, or state GA in 2013 compared with 4.5% of USCs."<sup>119</sup> Yet this figure of noncitizen participation in federal benefit programs does not distinguish between those who are refugees and asylees and those who obtained it through a family or employment-based petition. Refugees and asylees are eligible for SSI for a seven-year period in order to ease the transition into this country's workforce and social environment. In contrast, LPRs who immigrate or adjust through other means are barred for their first five years from accessing SSI, and they are subject to sponsor-to-alien deeming of income thereafter. So it is inappropriate to lump this latter group of LPRs in with those who are in fact encouraged to participate in federal benefit programs, and it is disingenuous to use it as a basis to make age above 61 years a negative factor.

Similarly, DHS states "studies show a relationship between advanced age and receipt of public benefits." There is no debate that seniors require greater amounts of health care than persons in the prime of life. But the Survey of Income and Program Participation (SIPP) does not distinguish between refugee/asylees and other LPRs in their receipt of cash and non-cash benefits. The statistics that are relied upon do not support DHS's conclusions; only the results of a study that measured elderly non-refugee/asylee LPRs' access to these programs would have any bearing on likelihood of becoming a public charge.

## **b. Health**

The NPRM proposes that if an applicant "has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment" it would be

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<sup>118</sup> NPRM at 51180.

<sup>119</sup> NPRM at 51180.

considered a heavily-weighted negative factor.<sup>120</sup> CLINIC objects to DHS's determination that the Rehabilitation Act of 1973 467 and the Americans with Disabilities Act (ADA) of 1990 does not affect its ability to assign a negative weight on the basis of health to an individual with a disability.

The proposed regulation would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.<sup>121</sup> Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the "sole factor," in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and "archaic attitudes" about disabilities that the Rehabilitation Act was meant to overcome.<sup>122</sup>

The proposal would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disability and the discrimination they experience because of it. Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability. They also rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed services that allow them to manage their medical conditions, participate in the workforce and improve their situation over time.

### **c. Family Status**

The DHS asserts that an applicant's larger family size is correlated with fewer assets and resources, and therefore increases the likelihood of becoming a public charge.<sup>123</sup> For that reason, family size would be a factor in whether the intending immigrant is more or less likely to become a public charge.

The NPRM indicates that the applicant's household size would be counted in both the family status factor and the assets, resources, and financial status factor.<sup>124</sup> CLINIC objects to this potential double-counting. If DHS were correct in its assertion that larger family size correlates with fewer assets and resources, then an applicant's large family size would result in two negative factors in the determination. If, however, DHS is incorrect in its assertion about the correlation between family size and available assets, at least in one particular case, and the applicant has a large family but sufficient assets and resources to support them, then he may have one negative mark for the size of his family and one positive mark for his sufficient resources. But why should he have a negative mark for the size of his family when he has proven that he has sufficient income and resources? If DHS is logically consistent and gives such a case two positive marks for family size and resources, then small or large family size would always result in two marks one way or the other. If

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<sup>120</sup> NPRM at 51292, proposing § 212.22(b)(2)(i).

<sup>121</sup> 6 CFR 15.30(b)(1)(ii), (iii), (iv).

<sup>122</sup> *School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 279 (1987).

<sup>123</sup> NPRM at 51175.

<sup>124</sup> *Id.*

family status will naturally be weighed as part of the assets, resources, and financial status determination, then it is being considered in the totality of the circumstances and should not count a second time independently.

Finally, DHS only indicates that family status will be a factor in “whether the alien’s household size makes the alien more or less likely to become a public charge.”<sup>125</sup> DHS does not indicate what family size or number of household members would indicate a “positive” or a “negative” factor. DHS does not provide sufficient data or explanation for stakeholders to meaningfully comment on the way it will evaluate family status in a public charge determination, so the requirement to provide sufficient notice under the APA has not been met.

#### **d. Assets, Resources, Financial Status**

The DHS is proposing to look at the intending immigrant’s household’s annual gross income; if it is under 125 percent of the federal poverty guidelines, this would be a negative factor. In calculating income, the applicant would be able to include assets and resources, assuming they are at least five times the shortfall of income.<sup>126</sup> The following would “frequently carry considerable positive weight, because they are the most tangible factors to consider”:

- annual gross household income
- income from non-family members residing with alien
- income provided to the alien on a continuing monthly or yearly basis
- cash assets and resources in bank
- assets that can be converted to cash within 12 months (real estate) or other assets
- annuities, securities, retirement and educational accounts

Within this factor, DHS will also consider whether the alien has:

- applied for or received public benefits, or been certified or approved for receipt
- whether the applicant applied for or received a fee waiver
- credit history and credit scores, and
- private health insurance or ability to pay for it.<sup>127</sup>

DHS concludes that “an alien’s lack of assets and resources, including income, makes an alien more likely to receive public benefits.”<sup>128</sup> It states that “financial status also includes alien’s liabilities as evidenced by the credit report and score as well as past or current receipt of public benefits.”<sup>129</sup> It will find that current and past receipt of designated public benefits is a negative factor, as well as consider receipt of any immigration filing fee waivers<sup>130</sup>.

DHS is “proposing that USCIS would review any available U.S. credit reports as part of its public charge inadmissibility determinations.”<sup>131</sup> Having a “good or better is a positive factor.” “Having private health

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<sup>125</sup> NPRM at 51291, proposing § 212.22(b)(3)(i).

<sup>126</sup> NPRM at 51291, proposing § 212.22(b)(4)(i)(A).

<sup>127</sup> NPRM at 51291, proposing § 212.22(b)(4)(ii).

<sup>128</sup> NPRM at 51187.

<sup>129</sup> NPRM at 51187.

<sup>130</sup> NPRM at 51188.

<sup>131</sup> NPRM at 51189.

insurance is a positive factor,” while “lack of health insurance or lack of resources to pay for medical costs would be a negative factor.”<sup>132</sup>

CLINIC opposes the changes to the current factors that define “assets, resources, and financial status.” To begin, the proposed rule states: “DHS has chosen a household income of at least 125 percent of the FPG, which has long served as a touchpoint for public charge inadmissibility determinations.”<sup>133</sup> This is incorrect. The “touchpoint” for the public charge inadmissibility determination has always been 100 percent of the poverty guidelines. Congress added a statutory requirement of 125 percent of poverty level in 1996, but only applied it to the sponsor, not the intending immigrant. Even when Congress codified the five-factor test into the statute, it did not add any language specifying the necessary income level of the intending immigrant.

The Department of State has consistently determined that the immigrant visa applicant only has to establish prospective income at or above the poverty income guideline, not at 125 percent of it. For example, it confirmed in 1997:

An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line...and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).<sup>134</sup>

In other words, for those seeking an immigrant visa who are subject to the public charge ground of inadmissibility but exempt from the affidavit of support requirement, they are required to show income and resources at 100 percent of the poverty guidelines.

Five years prior to IIRIRA, the State Department issued a final regulation defining public charge. It stated:

(d) Significance of income poverty guidelines. An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).<sup>135</sup>

The FAM in 1991 also stated:

An alien relying solely on personal income for support of self and dependent family members after admission should be presumed ineligible for an immigrant visa under 212(a)(4) unless such income, including that to be derived from prearranged employment, will equal or exceed the poverty income guideline level for the alien’s family size. The consular officer should refer to the most recent poverty income guideline table published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.<sup>136</sup>

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<sup>132</sup> NPRM at 51189.

<sup>133</sup> NPRM at 51187.

<sup>134</sup> 62 Fed. Reg. 67564 (Dec. 29, 1997). The State Department on January 3, 2018, with no notice and without providing public comment amended the FAM to raise the required income level from 100 to 125 percent of poverty.

<sup>135</sup> 56 Fed. Reg. 30422, 30425 (July 2, 1991)(finalizing 22 CFR § 40.41(d)).

<sup>136</sup> 9 FAM 40.41 N3.4 (1991). *See also* 9 FAM 40.41 N4.6-2 (2002).

The DHS states that it “welcomes comments on whether 125 percent of the FPG is an appropriate threshold in considering the alien’s assets and resources...”<sup>137</sup> CLINIC opposes the raising of the standard and recommends maintaining the necessary income level for the applicant at 100 percent of the poverty guidelines rather than arbitrarily raising it to 125 percent. Raising the requirement from 100 to 125 percent would have the effect of possibly disqualifying a large percent of the applicants. For example, 4.4 percent of persons residing in the United States have an income that falls between 100 and 125 percent of poverty.<sup>138</sup>

DHS lifted the “at least 125 percent of the Federal poverty line” requirement from IIRIRA’s income standard for the sponsor and is proposing to apply it to the applicant, but it has not incorporated the other aspects of the statute and regulations governing how income is to be measured. For example:

- The NPRM draws no comparable distinction between applicants who have family members on active duty in the Armed Forces and those who do not. The NPRM fails to take into consideration that the statute lowers that level to 100 percent of poverty for a sponsor who is on active duty in the Armed Forces.<sup>139</sup>
- The regulations allow the sponsor to include the income of any household member who is considered a “relative” and who is residing with the sponsor. Therefore, the sponsor’s spouse, adult or married children, parents, or sibling can include their income as part of the total household income to satisfy the 125 percent requirement.<sup>140</sup> The NPRM does not clearly propose how income of the intending immigrant should be measured.
- The law allows for sponsors to use significant assets that can be converted into cash within one year to meet the required income level, assuming the assets total at least five times the shortfall between income and the 125 percent of poverty level.<sup>141</sup> But the law also provides that petitioners who are U.S. citizens and are sponsoring their spouse or child over 18 only have to demonstrate assets that are three times the shortfall. The NPRM does not incorporate that exception.

CLINIC also objects to the NPRM’s emphasis on employment and income, since many immigrants—particularly the elderly—stay at home to raise their children and grandchildren. The Migration and Policy Institute conducted a study recently that indicated that lack of employment skills outside the household, coupled with young or advanced age, would disqualify many low-income immigrant children and the elderly. Based on U.S. Census data, it found that about 45 percent of children had two or more negative factors, as did 72 percent of adults over age 61.<sup>142</sup> Also, the proposed rule is silent on how immigration officers should treat applications where a working family member passes the public charge test but a nonworking spouse and children fail it.

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<sup>137</sup> NPRM at 51187.

<sup>138</sup> United States Census Bureau, “Historical Poverty Tables: People and Families – 1959 to 2017: Table 6. People below 125 Percent of Poverty Level and the Near Poor.” Available at: [www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html](http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html).

<sup>139</sup> INA § 213A(f)(3).

<sup>140</sup> 8 CFR §213a.1 (definition of relative).

<sup>141</sup> INA § 213A(f)(6)(A)(ii); 8 CFR § 213a.2(c)(2)(iii)(B).

<sup>142</sup> Migration Policy Institute, “Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration,” available at [www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration](http://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration).

### e. Credit Reports and Scores

DHS proposes that USCIS consider an intending immigrant's U.S. credit report and score as part of the financial status factor.<sup>143</sup> DHS claims that credit reports and credit scores can indicate whether a person is likely to be self-sufficient and support a household.<sup>144</sup> However, DHS does not provide any support for this assertion.

Credit reports and credit scores have a very narrow and specific purpose. Credit scoring models are designed to predict future credit performance, meaning the likelihood, relative to other borrowers, that a consumer will become 90 or more days past due on a credit obligation in the following two years.<sup>145</sup> A bad credit score does not reflect how likely a person is to use public benefits or become a public charge. Credit reports and credit scores do not reflect the reasons for any late payments, including circumstances beyond the consumer's control, such as a major illness, an emergency expense, or a loss of employment – all situations from which the individual may ultimately recover.

DHS recognizes that many intending immigrants will not have a credit history or credit score to consider.<sup>146</sup> Studies show that even when immigrants do have credit histories, their credit scores are artificially low.<sup>147</sup> Credit history is established over a lifetime in the United States. Intending immigrants who have never before been to the United States will not have a credit history as foreign credit history cannot be transferred to the U.S.<sup>148</sup> Those who have a temporary legal status or are undocumented, but now eligible for permanent residency, also face significant barriers to establishing a good credit history. Depending on the creditor, a Social Security Number may be required to apply for a credit card or a loan. In other cases, an Individual Taxpayer Identification Number is sufficient. Most banks will also require a prior banking or credit history to make a loan.<sup>149</sup> To establish a credit history, one must have a credit account opened in their name. Those looking to build credit for the first time must consider creative approaches to qualifying for credit in their own name. One might be added as a joint user for a family member's established credit card or apply for a secured credit card, which requires cardholders to pay a security deposit to protect the lender in case of default. Intending immigrants, who often lack an understanding of United States financial systems, are often at a disadvantage in these endeavors. While intending immigrants, including those who are undocumented, may legally obtain credit cards, studies show that many immigrants do not<sup>150</sup>. Many immigrants face

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<sup>143</sup> NPRM at 51188-51189.

<sup>144</sup> NPRM at 51189.

<sup>145</sup> Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 7, 2015, available at [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf) (most credit scoring models are built to predict the likelihood relative to other borrowers that the consumer will become delinquent on payments).

<sup>146</sup> NPRM at 51189.

<sup>147</sup> Bd. of Governors of the Fed. Reserve System, *Report to the Congress on Credit Scoring and Its Effect on the Availability and Affordability of Credit* at S-2 (Aug. 2007), available at [www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf), (“Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance.”).

<sup>148</sup> MyFICO, *Frequently Asked Questions* available at [www.myfico.com/credit-education/faq/credit-reports/migrating-your-credit-history](http://www.myfico.com/credit-education/faq/credit-reports/migrating-your-credit-history), (last accessed Nov. 27, 2018) (“Credit reports and credit histories do not transfer from country to country. There are legal, technical and contractual barriers that prevent a person from transferring their credit report to a different country. Unfortunately, this often means that a new immigrant to the US will need to begin to build a new credit history.”).

<sup>149</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at [www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf](http://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf).

<sup>150</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at [www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf](http://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf); see also “Giving Credit Where Credit is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants,” Nathalie Martin, 2015 Mich. St. L. Rev. 989.

significant barriers to establishing credit related to documentation status, language skills, lack of trust in or understanding of the U.S. financial system, and cultural and educational experiences.”<sup>151</sup> On average, immigrants are less likely to have a bank account in the United States than native-born citizens.<sup>152</sup> In many immigrant communities there is an aversion to borrowing or accruing debt because of uncertainty regarding how long an individual may stay in the United States and other barriers to access.”<sup>153</sup>

As a result, many immigrants operate outside the formal financial system, often saving through informal channels rather than banks.<sup>154</sup> Credit scores are calculated using multiple factors, including an individual’s credit history (patterns in paying credit card or loan debt and applications for new credit); the amount of current debts that are carried, and the types of current credit they carry.<sup>155</sup>

A United States credit report from Experian, Equifax or TransUnion is based on mortgages, car loans, student loans, personal loans, credit cards, and other loans obtained in the United States.<sup>156</sup> Checking accounts generally have little affect on a credit score<sup>157</sup>. Many intending immigrants do not have access to these types of financial resources and will not have a credit history or sufficient credit history to generate a reliable score. For many intending immigrants, day-to-day transactions such as receiving wages, paying rent and other bills, and buying food often take place in cash.<sup>158</sup> Credit reports and credit scores do not take these transactions into account, and thus do not provide an accurate view of an intending immigrant’s financial history.

DHS acknowledges that not all intending immigrants will have a credit history; adding this as a factor for consideration is therefore misguided. A lack of a credit history or a poor credit score has no bearing on someone’s likelihood of becoming a public charge. Instead, it invites adjudicators to make judgments about an individual’s character, trustworthiness, responsibility, and reliability based on an imperfect tool that was never designed for such a purpose.

DHS also recognizes that credit scores may contain errors and proposes that it will not consider any error on a credit score that has been “verified by the credit agency.”<sup>159</sup> This places an added burden on intending immigrants to monitor their credit histories continually and advocate with the credit agency to make any necessary corrections – an involved process that would be difficult for many intending immigrants to navigate and complete before the public charge assessment is made.

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<sup>151</sup> *Id.*

<sup>152</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at [www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf](http://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf); see also “Giving Credit Where Credit is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants,” Nathalie Martin, 2015 Mich. St. L. Rev. 989.

<sup>153</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf>.

<sup>154</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf>.

<sup>155</sup> “Credit Reports and Scores,” USA.gov, available at [www.usa.gov/credit-reports](http://www.usa.gov/credit-reports) (last accessed Nov. 27, 2018).

<sup>156</sup> Bd. of Governors of the Fed. Reserve System, *Consumer’s Guide, Credit Reports and Credit Scores* available at [www.federalreserve.gov/creditreports/pdf/credit\\_reports\\_scores\\_2.pdf](http://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf), (last accessed Nov. 27, 2018).

<sup>157</sup> Experian, *Does an overdraft on my checking account affect my credit score?*, available at [www.experian.com/blogs/ask-experian/does-an-overdraft-on-my-checking-account-affect-my-credit-score/](http://www.experian.com/blogs/ask-experian/does-an-overdraft-on-my-checking-account-affect-my-credit-score/) (last accessed Dec. 5, 2018); Investopedia, *What affects my credit score?*, available at [www.investopedia.com/ask/answers/040715/how-does-your-checking-account-affect-your-credit-score.asp](http://www.investopedia.com/ask/answers/040715/how-does-your-checking-account-affect-your-credit-score.asp) (last accessed Dec. 5, 2018).

<sup>158</sup> NYC Department of Consumer Affairs, “Immigrant Financial Services Study,” available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf>.

<sup>159</sup> NPRM at 51189.

Credit reporting and credit scoring are not entirely objective. For decades, studies have documented racial disparities reflected in credit histories and scores. Black and Hispanic people are notably more likely than Caucasian people to have no credit history records or to have a credit record with insufficient information to generate a reliable score.<sup>160</sup> Immigrants are particularly disadvantaged in this system.

While DHS states that a good credit score is a positive factor and that a bad score is a negative factor, there are no specifics that describe how USCIS will evaluate credit reports that DHS acknowledges can be flawed and incomplete. Allowing an adjudicator unfettered access to these records would be concerning. Credit reports and credit scores are a poor tool for assessing a person's likelihood of becoming a public charge and CLINIC opposes the use of such records in the public charge assessment. The lack of a credit score, or a credit score that is considered less than "good" should not be a factor in the public charge determination.

#### **f. Education and Skills**

DHS proposes to require "adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge."<sup>161</sup> It proposes to consider recent history of employment; high school degree (or its equivalent) or higher education; occupational skills, certifications, or licenses; and proficiency in English or proficiency in other languages in addition to English.<sup>162</sup>

Congress made English proficiency a requirement for citizenship and not the initial stage of becoming an LPR.<sup>163</sup> The proposed rule would bypass Congress in imposing this new standard. The only time English proficiency has been expected at the LPR stage was with the limited 1986 legalization program, where Congress specified that applicants had to have "a minimal understanding of ordinary English"<sup>164</sup> that could be satisfied of having taken 40 hours of classes. This requirement was imposed at the second of two stages for becoming an LPR, after the applicant had been residing in the United States for several years.

Equally troubling is how this English "proficiency" would be measured. The NPRM does not indicate what tests might be employed, whether they would be standardized, and what questions might be asked so that whatever test that is employed is done uniformly. Would the test be administered by the adjustment officer? Would there be any exception for those who are developmentally disabled or who have a physical or mental impairment? Would the test have both a reading and writing component, in addition to an oral one? Would those who are unable to pass the test initially be able to be re-tested within a certain period of time before a formal finding of public charge inadmissibility was made? What type of accommodations would be available to those who are blind, deaf, or have other handicaps short of disability? How would officers measure the applicant's proficiency in other languages, in addition to English? CLINIC strongly opposes the insertion of an English proficiency standard into the public charge test.

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<sup>160</sup> Consumer Financial Protection Bureau, *Data Point: Credit Invisibles*, May 7, 2015, available at [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf); *See also* National Consumer Law Center, "Past Imperfect: How Credit Scores and other Analytics "Bake In" and Perpetuate Past Discrimination," May 2016, available at [www.nclc.org/images/pdf/credit\\_discrimination/Past\\_Perfect050616.pdf](http://www.nclc.org/images/pdf/credit_discrimination/Past_Perfect050616.pdf).

<sup>161</sup> NPRM at 51291, proposed § 212.22(b)(5)(i).

<sup>162</sup> NPRM at 51291, proposed § 212.22(b)(5)(ii).

<sup>163</sup> Compare INA § 312(a)(1) with INA § 245(a), 245(c).

<sup>164</sup> INA 245A(b)(1)(D).

**g. Affidavit of Support**

The NPRM would require USCIS officers to consider the “likelihood that the sponsor would actually provide the statutorily-required amount of financial support... and any other related considerations.”<sup>165</sup> The agency “would look at how close of a relationship the sponsor has to the alien, as close family members would be more likely to financially support the alien.”<sup>166</sup> Officers would be expected to “[i]nterview the sponsor to determine whether the sponsor is willing and able to support the alien on a long-term basis.”<sup>167</sup>

CLINIC opposes any new preference that the joint sponsor be a relative, be residing with the applicant, or that it demonstrate past financial contributions. Congress did not impose such requirements when they provided for a joint sponsor to step in and guarantee financial support, in addition to that of the petitioner/sponsor. They set out the following requirements for the joint sponsor: be a U.S. citizen, LPR, or U.S. national; at least 18 years of age; domiciled in the United States; and evidence the necessary income to maintain the sponsored immigrant(s) at 125 percent of the poverty line.<sup>168</sup> Had Congress wanted to add other requirements, such as the relationship to the applicant or the credibility of the joint sponsor, it would have done so.

In fact, the USCIS and State Department officers have been specifically instructed *not* to consider “the credibility of an offer of support from a person who meets the definition of a sponsor and who has verifiable resources.”<sup>169</sup> The reason is simple: “the affidavit of support is enforceable regardless of the sponsor’s actual intent.”<sup>170</sup> The State Department instruction goes on to emphasize:

absent fraud, however, Department believes that the enforcement measures provided by the Act should be considered a sufficient safeguard in all cases in which there are no significant public charge concerns...If the consular officer finds the I-864 meets the technical requirements of Section 213A, a determination must then be made whether there are significant public charge concerns. Only if the officer determines there are significant public charge concerns might the issue of credibility of the affidavit arise.<sup>171</sup>

These significant public charge concerns are defined as: specific, identifiable personal characteristics of the applicant that would lead the consular officer to believe that the applicant would require considerable resources from either the sponsor or the public once the applicant is in the U.S. Such identifiable characteristics might be chronic illness, physical or mental handicaps, extreme age or other serious condition that in the absence of significant available personal resources or insurance would normally result in the expenditure of public funds on an individual’s behalf.<sup>172</sup>

In response to a question as to whether the joint sponsor has to be related to the applicant or can merely be an acquaintance, the State Department recently reaffirmed that: “A joint sponsor who meets the citizenship,

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<sup>165</sup> NPRM at 51292, proposing §212.22(b)(7)(i)(A)(3).

<sup>166</sup> NPRM at 51198.

<sup>167</sup> NPRM at 51198.

<sup>168</sup> INA § 213A(f).

<sup>169</sup> “I-864 Affidavit of Support: Update No. 14 – Commitment to Provide Assistance,” Department of State, UNCLAS STATE 102426 (June 1998).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

residence, age, domicile, and household income requirements may execute a separate Form I-864 on behalf of the intending immigrant. The joint sponsor can be a friend or third party who is not necessarily financially connected to the sponsor's household."<sup>173</sup>

The essential problem in imposing this additional requirement is that DHS officials are not in a position to determine the likelihood that the joint sponsor will provide support based on the information in the Form I-864 and thus will be relying on superficial evidence such as family relationship and residence. Furthermore, there is no call for administrative officers adjudicating immigration cases to second-guess the binding nature of a contract established and made binding by Congress.

### **VIII. Heavily Weighed Factors**

DHS proposes that the following factors or circumstances weigh heavily in favor of inadmissibility on public charge grounds:<sup>174</sup>

- Lack of employability, as demonstrated by current unemployment, poor employment history, or [few] reasonable prospects for future employment;
- Current receipt of one or more public benefit, as defined by the rule.
- Receipt of one or more public benefit within 36 months prior to filing an application for a visa or admission.
- Lack of private health insurance or the financial resources to pay for a diagnosed medical condition “that is likely to require extensive medical treatment or institutionalization” and that will interfere with the intending immigrant’s ability to provide for herself, attend school, or work.
- A previous finding of inadmissibility on public charge grounds.
- A combination of assets and resources that fall below 125 percent of the FPG, as required by the affidavit of support.<sup>175</sup>

The NPRM also includes one heavily weighed positive factor, “if the alien has financial assets, resources, support, or annual income of at least 250 percent of the FPG in the totality of circumstances.”<sup>176</sup> DHS suggests a level of income or assets that is double what an affidavit of support sponsor would be required to demonstrate.

As stated previously, CLINIC opposes DHS’ prioritization of the five statutory factors over the affidavit of support. Emphasizing the five factors and these “heavily weighed” factors radically changes the longstanding totality of the circumstances evaluation and replaces it with a vague test that requires adjudicators to weigh multiple factors against individual circumstance using guidance that is unclear. Adding additionally heavily weighed factors do not bring any additional clarity to the adjudication process. In fact, DHS asserts that even factors that are not specifically enumerated in the rule “may be weighted heavily in individual determinations....”<sup>177</sup> There is no real limitation as to what adjudicators can consider. Essentially, adjudicators could find almost any circumstance to be dispositive within the totality of circumstances in a particular case. This ambiguity will lead to inconsistent adjudications and create confusion in the community.

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<sup>173</sup> Minutes of meeting with Department of State and AILA on 10/25/2018, available at:

[https://travel.state.gov/content/travel/en/News/visas-news/20181018\\_dept-of-state-meeting-with-aila.html](https://travel.state.gov/content/travel/en/News/visas-news/20181018_dept-of-state-meeting-with-aila.html).

<sup>174</sup> NPRM at 51198.

<sup>175</sup> DHS Proposed Public Charge Rule, § V L 1.

<sup>176</sup> NPRM at 51204.

<sup>177</sup> NPRM at 51198.

Many immigrants are likely to have some heavily weighed negative factor present. According to some studies, “42 percent of noncitizens who originally entered the U.S. without LPR status have characteristics that DHS could consider a heavily weighed negative factor, including current enrollment in a public benefit (26%), not being employed and not a full-time student (and aged 18 or older) (27%), and having a disability that limits the ability to work and lacking private health coverage (3%). Those with characteristics that DHS could potentially consider a heavily weighed negative factor are significantly more likely to be a parent (65% vs. 34%) and to be a woman (59% vs. 27%) compared to those without characteristics that DHS could consider a heavily weighed negative factor.”<sup>178</sup> The proposed heavily weighed factors would greatly disadvantage women, children, and seniors.

While DHS states that the presence of a heavily weighed factor is not dispositive, the proposed structure, which allows countless factors to be considered in each unique case, will lead to unpredictable and conflicting determinations.

### **IX. DHS’ Proposal to Reestablish Public Charge Bonds is Unnecessary and Burdensome**

DHS proposes reestablishing the public charge bond, which is authorized under INA §§ 103(a)(3) and 213, but has rarely been employed during the last 20 years after the affidavit of support was added as a requirement.<sup>179</sup> The proposed rule would amend corresponding regulations at 8 CFR §§ 103 and 213.1. Under the proposed rule, a public charge bond could be posted to overcome a finding of inadmissibility. The bond would serve as a contract between DHS (the obligee) and an individual or company (the obligor) who pledges money to guarantee that a noncitizen will not receive public benefits. If the bond is breached the obligor must pay the full bond amount to DHS. CLINIC opposes the proposed implementation of a public charge bond for the following reasons:

First, the stated intent for implementing a public charge bond is to hold the government harmless against aliens becoming a public charge.<sup>180</sup> However, the long established affidavit of support already serves that purpose. DHS draws distinctions between the affidavit of support and the public charge bond, but it does not provide support for the idea that the affidavit of support is an insufficient safeguard.<sup>181</sup> The affidavit of support is a legally enforceable contract that requires a sponsor to maintain an immigrant’s income at a level that is above the federal poverty guidelines. It allows sponsored immigrants and the agencies that provide public benefits a cause of action to recover expenses, ensuring that the government does not bear the financial burden of any benefits used by a sponsored immigrant. DHS does not cite any evidence to show that the affidavit of support is inadequate for protecting the government against a sponsored immigrant’s use of public benefits.

Second, DHS proposes creating a new and complicated bond process that will be very burdensome on immigrants and legal service providers. By failing to provide a mechanism for the direct payment of a cash bond, the government forces intending immigrants into a high-risk contract with private surety companies that will profit at the expense of immigrants. The time and expense involved for intending immigrants, their families, and legal service providers will increase greatly. Applicants will be burdened with the task of

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<sup>178</sup> Kaiser Family Foundation, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid*, Oct. 11, 2018, available at [www.kff.org/report-section/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicare-key-findings/](http://www.kff.org/report-section/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicare-key-findings/) (last accessed Dec. 5, 2018).

<sup>179</sup> NPRM at 51219.

<sup>180</sup> NPRM at 51218.

<sup>181</sup> NPRM at 51220.

identifying a surety company to contract with, reviewing complex terms of service and costs that may vary greatly. Intending immigrants will be required to pay a percentage of the bond amount to the surety company, and will likely need to provide collateral in the event the bond is breached. The bond process will be effectively out of reach for many immigrants. Those who are able to post bond would be subject to a high risk contract with a surety company yet have no real access to a DHS review process. It is concerning that the intending immigrant, who is directly affected by decisions regarding bond cancellation and has the greatest interest at stake, has no power to appeal a denied application for bond cancellation or a USCIS determination that bond has been breached. Only the surety company would have that right.<sup>182</sup>

Third, the proposed rule does not provide a clear standard for who should qualify for a public charge bond. Adjudicators will weigh positive and negative factors, which have been enumerated in the proposed rule, but it is unclear how these factors, including “heavily weighed negative factors” will be evaluated in practice.<sup>183</sup> With no clear standard, there is a risk that adjudicators will make these decisions in an inconsistent and unpredictable manner. Depending on how this case-by-case analysis is implemented, many applicants who should be able to post bond may be denied an opportunity to do so. Fourth, under the proposed rule applicants cannot affirmatively request bond and present a case for their eligibility.<sup>184</sup> Applicants will be at the mercy of the adjudicating officer’s discretion. While some decisions regarding the public charge bond may be appealed, no process is provided for challenging an adjudicator’s decision not to allow a bond application.

Fifth, DHS offers no guidance regarding how USCIS should set an individual bond amount. While USCIS will consider individual circumstances, there is no explanation of how the evaluation will be made.<sup>185</sup> What factors might merit a lower or higher bond? Where will the upper limit on bond be set? There is a risk that adjudicators may set arbitrarily high bond amounts and make inconsistent decisions across cases. CLINIC proposes that the amount of the bond be set at a fixed amount for all applicants rather than vary depending on the whims of adjudicators.

Finally, the penalty for breaching bond is excessive. If any public benefit is used, the entire bond amount is forfeited, regardless of the value of the benefit used. For example, under the proposed rule, an applicant who becomes a permanent resident and receives \$1,821 worth of SNAP benefits in 2018 would forfeit at least \$10,000. DHS acknowledges that the \$10,000 amount does not reflect the type of public benefit received or how long the person received the benefit,<sup>186</sup> thus the proposed minimum bond amount bears no real relationship to the value of the public benefit that is received. This arbitrary minimum amount will not be in reach for many immigrants.

## **X. The Proposed Rule Would Create Tremendous Administrative Burdens on USCIS, Compounding Current Backlogs**

The proposed rule would create new burdens on USCIS, which would have to process additional forms like the I-944 and Declaration of Self-Sufficiency, and would have additional time burdens to evaluate the evidence required under this rule. These additional burdens would exacerbate USCIS’ ongoing backlogs of the past few years. Data show that there have been lengthening processing times of applications for

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<sup>182</sup> NPRM at 51226.

<sup>183</sup> NPRM at 51221.

<sup>184</sup> NPRM at 51221.

<sup>185</sup> NPRM at 51121.

<sup>186</sup> NPRM at 51221.

employment authorization, travel documents, green cards, green card replacements, and more.<sup>187</sup> DHS has admitted in 2018 that USCIS has and continues to face capacity challenges.<sup>188</sup> The agency has not articulated a compelling reason to significantly change the public charge evaluation process in a way that would so significantly overburden itself.

## **XI. The Rule Would Increase Processing Times, Unreasonably Increasing Burdens on Immigrants and Their Representatives**

This rule would add significant complexity to the public charge analysis, very likely resulting in increasing the already lengthy USCIS processing times. Processing delays significantly affect the lives of both U.S. citizens and immigrants. Delays can financially impair immigrants during the time that an immigrant cannot work due to a delay. Every day that a delay prevents an immigrant from working is a day they are not earning enough to support themselves and their families. The goal of this policy is self-sufficiency, but that goal cannot be achieved if processing times are made even longer. Delays also may affect the validity of immigrants' driver's licenses, which are essential for employment, medical treatment, banking, and air travel.

Delays also have deep emotional impacts on families beyond just a monetary cost. Families that are separated from each other may be waiting for adjudication to be reunited with their parent, child, or sibling. A processing delay extends that separation of families for months or years, causing trauma to young family members. Processing delays could also prevent a student from enrolling in school, a professional from advancing their career, or a family member from traveling to care for a sick relative.

In summary, the proposed rule would expand and make the agency's case processing delays even worse, make an operational crisis appreciably worse, and individuals and families throughout the United States would endure the negative ramifications.

## **XII. Conclusion**

Based on the above explanations regarding the proposed rule's many inconsistencies, its failure to properly account for public health and wellbeing, and failure to provide sufficient data and reasoning behind its decision, we strongly oppose the proposed regulation and request that it be withdrawn. We respectfully request that USCIS continue to make public charge determinations pursuant to its current policy and practices as established in 1999.

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<sup>187</sup> U.S. Citizenship and Immigration Services, "Historical National Average Processing Time for All USCIS Offices." Available at: <https://egov.uscis.gov/processing-times/historic-pt> (last accessed Dec. 7, 2018).

<sup>188</sup> Department of Homeland Security, "Annual Performance Report, Fiscal Years 2017-2019," at page 31. Available at: [www.dhs.gov/sites/default/files/publications/DHS%20Overveiw%20FY19%20CJ.pdf](http://www.dhs.gov/sites/default/files/publications/DHS%20Overveiw%20FY19%20CJ.pdf) (last accessed Dec. 7, 2018).

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Advocacy Director, at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Jeanne Atkinson". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jeanne Atkinson  
Executive Director