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**National Advocates
for Asian American,
Native Hawaiian &
Pacific Islander Health**

United States Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012-0001, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Sir/Madam:

Thank you for the opportunity to comment on this proposed rule. The Asian & Pacific Islander American Health Forum (APIAHF) wishes to submit our strong objections to the entire proposal and, for the reasons detailed below, requests that the Department of Homeland Security (DHS) immediately withdraw it. We believe this proposal is deeply problematic, both in its policies and in its perpetuation of racist immigration practices. Our comments thoroughly detail the harm that would be caused to Asian Americans and Pacific Islanders (AAPI) by the rule and the flawed methodology that DHS has used to justify it.

I. Background and Expertise of APIAHF

APIAHF is the nation's leading health policy organization working to advance the health and well-being of over 20 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPI) across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominately immigrant, many of whom are limited English proficient, and may be new to the U.S. health care system or unfamiliar with private or public coverage. We have longstanding relationships with over 150 community based organizations in 28 states, to whom we provide capacity building, advocacy and technical assistance. As such, we have a strong understanding of the needs and barriers in immigrant communities and the impact changes in immigration and public assistance policy would have on them.

For over 32 years, APIAHF has worked extensively on both the issues of immigration and health; areas of policy that this proposed rule would upend. Through research, analysis and community partnerships, these issues are the core of our expertise. APIAHF and our partners have consistently advocated for the importance of access to health care and other public assistance for all families, regardless of their citizenship status. We know from experience that access to quality health care, not burdened by obstacles like finances, means families can thrive and contribute to their communities. At the same time, we are reminded that our country has a deep history of racial discrimination that has contributed to health disparities among communities of color, including AAPIs. For example, AAs and NHPIs comprise 6 percent of the U.S. population, but nearly 60

percent of Hepatitis B cases.¹ AAs are 25 percent more likely to be diagnosed with diabetes than Whites, while NHPs are 3 times more likely.² APIAHF works to eliminate these disparities by advancing access to quality health care.

For over 6 years, APIAHF has partnered with organizations helping consumers enroll in health coverage, including Affordable Care Act (ACA) Marketplace plans, Medicaid and the Children's Health Insurance Program (CHIP). As part of these efforts, we co-founded *Action for Health Justice* with the Association of Asian Pacific Community Health Centers (AAPCHO), Asian Americans Advancing Justice and Asian Americans Advancing Justice – Los Angeles. As part of *Action for Health Justice*, we worked with 72 community based organizations and health centers and countless local assistants to inform efforts by the U.S. Department of Health and Human Services to reduce barriers for AA and NHP individuals navigating an often deeply complex enrollment process. The complexities that exist as part of enrolling in public health insurance or assistance are multiplied for immigrant populations. This is why the Centers for Medicare & Medicaid Services has put resources into addressing systemic problems that immigrants face in enrolling in public health insurance, such as verification and language access challenges. Through this experience, and others first hand, we know both the importance of health insurance for immigrants and their families, as well as the existing institutional problems that they already face in getting and stayed enrolled in the programs they are legally eligible for.

As such, we draw upon this extensive experience in noting that the proposed rule would irreparably and disproportionately harm the health of AAPs in the U.S., as well as have a severe economic and social impact on the communities they live in, the organizations that serve them, and the providers that treat them. For that reason, and as detailed below, this rule must be immediately withdrawn. Instead, we urge DHS to publicly commit to following the current practice around public charge to mitigate the harm the agency has already inflicted by proposing this rule.

II. DHS' Action Would Dramatically Change Longstanding Policy with Insufficient Justification

The proposed rule would lead to enormous upheaval and harm in the lives of the communities APIAHF advocates on behalf of. Despite this significant change, DHS has provided wholly insufficient evidence for why it is needed, both in terms of alleged policy problems and any circumstances that have changed since the guidance it seeks to overturn was promulgated. In addition, DHS acknowledges but fails to provide a remedy for the significant economic impact the regulation would have on communities, populations, states and industry, including manufacturers, health care providers and other stakeholders whose work or business is intertwined with the lives and health of

¹ Chen Jr, Moon s and Julie Dang, "Hepatitis B among Asian Americans: Prevalence, Progress, and Prospects for Control," *World Journal of Gastroenterology*, 14:21(42). (November 2015). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4641114/>

² "Native Hawaiian and Pacific Islander Health Disparities," *Asian & Pacific Islander American Health Forum*. (August 2010). Available at: <https://www.apiahf.org/resource/native-hawaiian-and-pacific-islander-health-disparities/>

immigrants. In fact, DHS entirely fails to consider whether this proposed policy is needed at all and whether it is the right approach to promoting the integration and success of immigrants. It appears that the rule stems, not from any sound policy analysis or process, but a pre-conceived decision born out of animosity for immigrant populations. This assertion is backed up by press reports stemming the start of this administration, when public charge was proposed alongside other methods of singling out immigrants.³

a. DHS Ignores or Distorts the Historical Interpretation of Public Charge

DHS proposes to change the definition of public charge in a radical departure from statute, practice and case law. In 1999, the Immigration and Naturalization Services, in field guidance, defined public charge as, as an immigrant who is “likely to become primarily dependent on the government for subsistence.” As our comments detail, this definition is in line with the historical and statutory interpretation of public charge. The proposed new definition would overturn that guidance that has not only stood for nearly 20 years, but has its basis in the entire history of U.S. public charge law.

DHS’ proposed definition of public charge as an immigrant who, “receives one or more public benefits,” is not in line with the congressional and regulatory history and will lead to a dramatic upheaval of our immigration and public benefits systems by a single executive agency. This change dramatically alters the longstanding policy goals around public charge. Instead of being a tool to ensure immigrants are self-sufficient, it becomes a tool to deny any immigrant who might use a public benefit, regardless of whether they would be able to survive without it. These are deeply different considerations, as DHS does not demonstrate that immigrants could not survive without the aid of the benefits it lists as negative factors. For example, under the threshold set by the proposed rule, use of \$2.50 a day in public assistance would be enough to deem someone a public charge, a deeply different threshold than “primarily dependent.”⁴ This is a very small amount and it is unreasonable to call someone using that level of assistance dependent on the government. In addition, the very programs that DHS proposes to negatively weight contribute to economic self-sufficiency and make immigrants more likely to be productive contributors to their communities.

b. DHS’s Proposed Factors Are Without Precedent and Deeply Damaging

Public Charge has never been interpreted in the U.S. as applying to use of programs beyond cash welfare and long term assistance. Yet, DHS proposes doing just that, by adding Medicaid, the Supplemental Nutrition Assistance Program (SNAP), public

³ Lind, Dara, "A leaked Trump order suggests he’s planning to deport more legal immigrants for using social services," Vox. (January 31, 2017). Available at: <https://www.vox.com/policy-and-politics/2017/1/31/14457678/trump-order-immigrants-welfare>.

⁴ "Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds," New American Economy Research Fund. (October 31, 2018). Available at: <https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/>

housing, Section 8 vouchers and Medicare Part D Low Income Subsidy to the list of programs, the use or potential use of which could cause a person to be determined a public charge. Adding these programs will cause immense and documented harm to AAPI communities.

In addition, DHS proposes, for the first time, to add unprecedented deeply individual and specific factors that could cause a person to be deemed a public charge, forcing immigration officers to consider narrowly defined groups of categories and weigh them by the agency's proposed standards when evaluating an immigration applicant under the "totality of circumstances test". These factors including income thresholds, ability to afford private health insurance and level of English proficiency, will make it much harder for families to unite in this country and disproportionately impact AAPIs, including those in the country and those wishing to enter it. Every immigrant subject to public charge, regardless of whether or not they have used benefits, will be evaluated on these factors, constituting an unprecedented overreach by DHS.

The 1999 field guidance was issued to "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."⁵ It also came on the heels of the 1996 immigration bill. In contrast, this proposed rule appears to have no such justification for what public circumstances prompted its issuance. There has been no reported confusion in the application of public charge in the field nor any new immigration legislation that could be used to justify a need for change. In addition, the proposed rule comes after nearly two years during which multiple drafts were leaked to press that have already led to a chilling effect, such as those documented by the Kaiser Family Foundation in their report, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health."⁶ While we discuss the chilling effect in more detail later in these comments, we wish to note that its existence is one of the most disturbing effects of this rule's impact, yet DHS barely acknowledges it in the preamble of the proposal.

c. The Proposed Incomes Thresholds Are Arbitrary and Without Precedent

DHS asks at FR51187 for comments on its proposal to consider whether an immigrant has a gross household income at least 125% of the federal poverty level as part of the totality of circumstances test. DHS appears to incorrectly and misleadingly conflate the financial support level that a sponsor is required to keep the person they are sponsoring at, with a requirement for the actual immigrant. There is no other part of immigration

⁵ "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds", 64 FR 28689. (May 26, 1999)

⁶ Artiga, Samantha and Petry Ubri, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," Kaiser Family Foundation. (December 13, 2017). Available at: <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>

law that DHS can point to for such an income threshold. Similarly, DHS appears to have no basis for heavily positively weighting income over 250% of the federal poverty level.

Section 551 of the Illegal Immigration Reform and Immigrant Responsibility Act Of 1996 states that no affidavit of support may be accepted unless it is one “in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125% of the Federal poverty line during the period in which the affidavit is enforceable.”⁷ In this context, DHS’ proposal to negatively weight the applicant’s income appears to not be based on sound policy analysis and is logically flawed. Only one of these policy requirements can be true: in the case of a potential immigrant making under 125% of FPL, either the immigrant is meant to be allowed into the U.S. and their sponsor is required to be financially responsible to maintain them at above that income level, or the immigrant would be likely to be considered a public charge due to their income, as proposed by the rule. In the second scenario, the statutory requirement becomes duplicative and irrelevant. In this case, it is clear that Congress considered the need for immigrants to maintain financial resources at a particular level and chose to make sponsors, not the immigrant, responsible for that level. The proposed threshold is not in line with statute.

d. The Proposed Rule Does Not Address Any Public Policy Problem

This proposed rule is unnecessary and DHS does not make a sufficient case in the preamble for why nearly 20 years of policy and 100 years of precedent should be overturned. The rule presupposes the concept that immigrants are coming to the U.S. to avail themselves of public assistance. Yet evidence demonstrates the opposite. If immigrants were coming to the U.S. for the sake of using public benefits, we would expect to see new restrictions to lead to a drop in new immigrants. However, immigration rates rose after the passage of the 1996 welfare reform legislation, peaking several years afterwards.⁸ Similarly, DHS cannot point to an influx of immigrants who could be considered public charges under this rule in recent years that would justify increased restrictions. For example, under this rule, lower educational attainment would be considered a negatively weighted factor, but since 2000, the number of immigrants with a bachelor’s degree has actually risen, from 13.7 percent to 17.2 percent in 2016.⁹

The lack of evidence for changes in immigration patterns aside, DHS presupposes that the use of benefits by immigrants is a net negative for society. As our comments describe, immigrant use of benefits actually provides a deep value for families, communities and our economy.

III. The Proposed Rule Exceeds the Authority Granted to the Department by Congress and Contravenes Congressional Intent by Grossly Expanding the

⁷ 8 U.S. Code § 1183a (a)(4)(B)(i)

⁸ "Rise, Peak and Decline: Trends in U.S. Immigration 1992 – 2004," Pew Research Center. (September 27, 2005). Available at: www.pewhispanic.org/2005/09/27/rise-peak-and-decline-trends-in-us-immigration-1992-2004/

Definition and Application of Public Charge and De-Facto Changing Program Eligibility

DHS, in the proposed rule, makes inaccurate and misleading claims about its authority to issue the proposed changes. Congress has amended the public charge statute without adopting anything resembling the standards proposed in this rule. It has also had the opportunity to adopt standards that would achieve similar effects and declined to do so. In addition, decisions by Congress to expand eligibility to public assistance programs listed in this proposed rule to those who would be subject to it contradicts the impact DHS could achieve and therefore, the validity of the rule.

a. DHS's Interpretation is Misaligned with the Public Charge Statute

Since its inception, Congress has never, nor has any previous administration, indicated that public charge should apply to anything besides cash assistance and long term care. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) is the most recent legislation to codify public charge. In it, Congress used its legislative powers to clearly strengthen certain aspects of how a public charge determination is made, such as making affidavits of support legally binding. However, Congress specifically declined to include provisions that legally define the list of programs in a way that would appear similar to the proposed rule. While the conference committee draft law included those provisions such that immigrants could be considered a public charge for using most means tested federal programs,¹⁰ the final version of the bill *did not* include those provisions.¹¹ As such, DHS cannot implement a rule with content that Congress considered and explicitly objected.

As an organization concerned with ensuring federal policy protects the health of immigrants, we are deeply concerned that the proposed rule would negatively weight an immigrant with existing health conditions that could be expensive or make it hard to work. Below we express more specific concern with that provision, but we also wish to note that previous immigration laws included the inadmissibility of those “who are certified by the examining surgeon as having a physical defect, disease, or disability, when determined by the consular or immigration officer to be of such a nature that it may affect the ability of the alien to earn a living, unless the alien affirmatively establishes that he will not have to earn a living.” This language was included in the Immigration and Nationality Act of 1952 and is similar to the justification DHS uses in this proposed rule. Yet, in 1990, Congress stripped this language from the INA in favor of less restrictive health grounds unrelated to an immigrants ability to work.¹² That Congress chose to end this reason for exclusion, as well as its intentionality in drafting it

¹⁰“Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Conference Report,” Section 523. (a)(5)(C)(i). (September 22, 1996). Available at <https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf>

¹¹ Joyce Vialet, "Immigration: INS's Proposed Public Charge Rule," CRS Report for Congress RS20265, July 16, 1999

¹² Wasem, Ruth Ellen, “Immigration Policies and Issues on Health-Related Grounds for Exclusion,” Congressional Research Service. (August 13, 2014).

as separate reason for exclusion from the concept of public charge when it was originally passed, weighs against any authority DHS might claim to propose including existing health conditions as part of public charge.

The more recent history of Congressional action on immigration supports the argument of lack of Congressional intent for broadening public charge beyond what action it took in 1996. In 2013, Congress amended the public charge statute to exempt immigrants who are a VAWA self-petitioner, a U-visa applicant, or a battered spouse or child.¹³ That this was the most recent action Congress has taken on public charge, to *restrict* its application, and not expand it as DHS proposes.

b. DHS's Proposal Makes Little Sense in the Context of Congressional Action on Eligibility

While DHS does not propose to, nor does it have the authority to, alter eligibility for public assistance programs, this proposal effectively does so. By forcing potentially impacted populations, such as those living in the U.S. who are eligible for public assistance, to choose between their ability to get a green card and access assistance that will improve their ability to thrive, DHS deprives that population of their ability to freely apply and use the benefits they are legally entitled to.

Over the past 20 years, since restricting them in PRWORA, Congress has expanded eligibility for public benefits to the populations this proposal would seek to label them a public charge for using.

The Agricultural Research, Extension, and Education Reform Act of 1998 restored SNAP eligibility for the disabled, elderly and children who had been residing in the U.S. before 1996.¹⁴ These vulnerable populations, who could be also determined public charges because of the proposed factors in the totality of circumstances test by merely existing, could have faced severe health consequences had Congress not restored eligibility.

Several years later, Congress chose to restore access to SNAP (then food stamps) for immigrant children, immigrants receiving disability benefits and any qualified alien living in the U.S. for more than five years in the Farm Security and Rural Investment Act of 2002. Again, by restoring access to food aid for those populations, Congress was taking action to improve their ability to live healthy, productive lives. Statements from key policymakers at the time indicate clearly their intent for immigrants to receive benefits, counter to the intent and impact of DHS' proposal.

"There are some portions of the bill which I favor, such as... providing food stamps to legal immigrants"¹⁵ – Senator. Arlen Specter

"By making all legal immigrant children eligible for food stamps and making adult legal immigrants eligible for food stamps after they have resided in the United States for 5

¹³ 8 U.S.C. 1182(a)(4)(E)

¹⁴ 8 U.S.C. 1612(a)(2) (F), (I) and (J)

¹⁵ Cong. Rec, 107th Congress, 2nd Session Issue: Vol. 148, No. 58. Page S4137

*years, California will be relieved of some of the costs shifted to the State after the 1996 welfare reform bill.*¹⁶ – Senator Diane Feinstein

*“In solidarity with the Bush administration, we propose to restore food stamp benefits for immigrant children and for disabled immigrants, as well as for immigrants who have been in the country for 5 years.”*¹⁷ – Representative Charles Stenholm

*“I am pleased that many of my colleagues from the other side of the aisle have joined with President Bush to recognize that the restrictions on immigrant eligibility from welfare reform went too far and put too many low-income immigrant families with children, many of whom are citizens, at risk.... Of course, this is subject to the sponsor deeming rules. Because USDA's rules on sponsor deeming are sensible and balanced, we choose to continue the current USDA sponsor deeming rules.”*¹⁸ – Representative Eva Clayton

*“The budget restores benefits to legal immigrants five years after entry to the United States, ensuring adequate nutrition among children and other vulnerable individuals, while requiring recent arrivals to support themselves through earnings”*¹⁹ – President George W. Bush

*“I strongly support the president's initiative. In a law that has reduced welfare by more than 50 percent, this is one of the provisions that went too far. In retrospect it was wrong. President Bush's instincts are exactly right.”*²⁰ - Newt Gingrich, (Speaker of the House during the passage of PRWORA)

In 2009, Congress again took action to expand access to benefits for immigrants. Section 213 of the Children’s Health Insurance Program Reauthorization Act (CHIPRA) extended states the option to extend eligibility for CHIP and Medicaid to lawfully residing pregnant women and children, including those without a green card.²¹ Under this provision of CHIPRA, known as the Immigrant Children's Health Improvement Act (ICHIA), states receive regular federal matching dollars for those enrollees, as compared to states that chose to use their own money to cover different population groups. Since the passage of CHIPRA, thirty-four states have expanded coverage to lawfully residing immigrant children.²² 34 states, many overlapping with those choosing to cover

¹⁶ Cong. Rec. May 8, 2002 107th Congress, 2nd Session Issue: Vol. 148, No. 57. Page S4027

¹⁷ Cong. Rec, 107th Congress, 2nd Session Issue: Vol. 148, No. 53. Page H2033

¹⁸ Cong. Rec, 107th Congress, 2nd Session Issue: Vol. 148, No. 53. Page H2038.

¹⁹ 2003 President’s Budget, Office of Management and Budget.

²⁰ Pear, Robert, "Bush Plan Seeks to Restore Food Stamps for Noncitizens," New York Times. Jan 10, 2002. Available at: <https://www.nytimes.com/2002/01/10/us/bush-plan-seeks-to-restore-food-stamps-for-noncitizens.html>

²¹ 42 U.S.C. 1396b(v)(4)(B)

²² “Health Coverage for Lawfully Residing Children,” Georgetown University Health Policy Institute: Center for Children and Families. (May 2018). https://ccf.georgetown.edu/wp-content/uploads/2018/05/ichia_fact_sheet.pdf

children, but not all, have opted to expand coverage to lawfully residing pregnant mothers.²³ Those states will be particularly burdened by this rule.

In addition, the legislation made it clear that a sponsor should not be held liable for costs to the government if any immigrant they have signed an affidavit of support for uses Medicaid or CHIP under these new provisions.²⁴ The inclusion of this provision makes it clear that DHS's proposal to include the use of Medicaid benefits by anyone enrolled in the program under ICHIA directly violates Congress' purpose in passing that law.

Statements of key policy makers at the time make it clear that the intent of this legislation was to allow these population groups to access benefits, counter to the effect and intent of DHS in this proposed rule:

"We have given States the option to cover legal immigrant children and pregnant women during their first 5 years in the United States. States can decide whether they want to cover those children."²⁵ – Senator Max Baucus

"One important and necessary change in the legislation before us gives the States the option to eliminate the 5-year waiting period that prevents legal immigrant children and legal immigrant pregnant women from getting timely health care."²⁶ – Senator John Rockefeller

"The bill provides a new option to cover pregnant women in CHIP. It provides states the ability to ensure that children don't have to wait 5 years for health care just because they are legal immigrants residing in this country."²⁷ – Representative Henry Waxman

"I am also grateful that this legislation includes important access for legal immigrant children who are currently denied coverage-- children who are born in the U.S. and are legal U.S. citizens. In Washington State we have provided coverage for these children. But the State is doing this alone without the full partnership of the Federal Government. H.R. 2 corrects this error and will allow Washington State to maintain coverage for more than 3,000 children."²⁸ - Representative Jim McDermott

"That is why we have passed this legislation to continue coverage for seven million children, cover an additional four million children in need, and finally lift the ban on

²³ "Health Care Coverage Maps," National Immigration Law Center. (January 2018). Available at: <https://www.nilc.org/issues/health-care/healthcoveragemaps/>

²⁴ 42 U.S.C. 1396b(v)(4)(B)

²⁵ Cong. Rec. January 26, 2009 111th Congress, 1st Session Issue: Vol. 155, No. 15. Page 5821.

²⁶ Cong. Rec. January 26, 2009 111th Congress, 1st Session Issue: Vol. 155, No. 15. Page 5821

²⁷ Cong. Rec. January 14, 2009 111th Congress, 1st Session Issue: Vol. 155, No. 8. Page H246

²⁸ Cong. Rec. January 14, 2009 111th Congress, 1st Session Issue: Vol. 155, No. 8. Page H247

*states providing insurance to legal immigrant children if they choose to do so.*²⁹ –
President Barack Obama

The above recent history through statute and statements by Congress make it clear that DHS exceeds its authority in proposing the changes in this rule.

IV. The Proposed Rule Threatens to Dramatically Limit Who is Allowed into the U.S. and Who is Allowed to Stay, Particularly Impacting Those Coming from Asian and Pacific Islander Nations, and their Families

a. Public Charge has a Deep and Racist History

This rule furthers a xenophobic and racist vision of America, bringing our country back to a place where it resembles those points in time when immigration policy sought to exclude people based on their race, ethnicity and country of origin. Organizations like APIAHF and our partners in the AA and NHPI advocacy movements as well as racial equity advocates, working with committed individuals across the country, have spent decades working to undo such policies.³⁰

The public charge rule was passed by the same Congress that passed the Chinese Exclusion Act in 1882. That shameful law was the result of “ethnic discrimination” by the U.S. government according to its own historians.³¹ Public charge was also used for discriminatory purposes, targeting immigrants fleeing the potato famine at a time when Irish were not considered White.³² Both policies reflect the deep animosity against immigrants from particular countries that stood in law for nearly one hundred years, before the racial quota system was finally eliminated in the mid-20th century in favor of the basis of today’s immigration system.

They were preceded in California by the similarly deeply racist Foreign Miners Tax, that, much like this rule, applied standards to immigrants that citizens were not held to, with discriminatory effect.³³ They also came soon after the U.S. Court of Appeals for the Ninth Circuit ruled that a Chinese immigrant did not have a right to naturalize because

²⁹ "Remarks by President Barack Obama on Children’s Health Insurance Program Bill Signing," The White House. (February 4, 2009). Available at: <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-childrensquo-health-insurance-program-bill-signing>

³⁰ Yoshiko Kandil, Caitlin, "After 50 years of 'Asian American,' advocates say the term is 'more essential than ever'," NBC News. (May 31, 2018). Available at: <https://www.nbcnews.com/news/asian-america/after-50-years-asian-american-advocates-say-term-more-essential-n875601>

³¹ "Chinese Immigration and the Chinese Exclusion Acts," U.S. Department of State Office of the Historian. Available at: <https://history.state.gov/milestones/1866-1898/chinese-immigration>

³² “2017 Yearbook of Immigration Statistics”, Department of Homeland Security. (2016). Available at: <https://www.dhs.gov/immigration-statistics/yearbook/2016>

³³ Hungu Chen, Mary, "The Result of the Foreign Miners Tax Act," Asian America Blog (1880-1900). (November 26, 2010. Available at: www.asianamgroup9.blogspot.com/2010/11/foreign-miners-tax-act.html

of his ethnic background.³⁴ Racist logic excluding people of Asian descent from citizenship followed with *Ozawa v. United States* in 1922 and *United States v. Bhagat Singh Thind* in 1923. In the 1930s, economic anxiety built upon racial assumptions led to the mass deportation of over 1 million people of Mexican decent, including many U.S. citizens.³⁵ Under the Filipino Repatriation Act of 1935, the U.S. government actively worked to pressure Filipinos, who had until very recently been under U.S. jurisdiction, to leave the country.³⁶ This proposed rule not only resembles this racist immigration history, it builds on other actions by this administration, such as the separation of families applying for asylum and the ban on immigrants from Muslim majority countries, to return us to racist immigration policies.

Public charge has already been used in the modern era for racial discrimination. The Port of Entry Detection (PED) Programs in the mid-late 1990s specifically targeted Asian and Latina women with small children.³⁷ Those mothers, based on their skin color and other traits, were interrogated by border officers at ports of entry about how they paid for their children's births. If they stated that they used public assistance, such as Medicaid, they were detained as public charges. These actions that were based in discrimination, not any policy or legal determination, among others, led to widespread fear and confusion in immigrant communities that helped to drive the creation of the 1999 field guidance. Yet now the administration proposes to adopt something very similar.

The effect of this proposed rule would be deeply racist. Analysis from the Migration Policy Institute found that the negative factors chosen by DHS would tilt immigration towards those from Europe.³⁸ This means that incoming immigrants will be whiter than they are now. When President Trump was reported to have rejected the concept of immigrants from poor countries in favor of countries like Norway, he was widely condemned, in part because the comments reflected a path out of line with American

³⁴ "This Month in History: In re Ah Yup rules Chinese ineligible for naturalized citizenship on April 29, 1878," Smithsonian Asian Pacific American Center. Available at:

<http://www.smithsonianapa.org/now/this-month-in-history-in-re-ah-yup-rules-chinese-ineligible-for-naturalized-citizenship-on-april-29-1878/>

³⁵ "America's Forgotten History Of Mexican-American 'Repatriation,'" Fresh Air. (September 10, 2015). Available at: <https://www.npr.org/2015/09/10/439114563/americas-forgotten-history-of-mexican-american-repatriation>

³⁶ Bohulano Mabalon, Dawn and Kevin Nadal, "What Filipina/o American History Can Teach Us About the Recent Executive Order on Immigration," Filipino American National Historical Society. (February 2, 2017). Available at: www.fanhs-national.org/filam/what-filipinao-american-history-can-teach-us-about-the-recent-executive-order-on-immigration/

³⁷ Park, Lisa Sun-Hee, "Challenging Public Charge Policy; Coalitional Immigrant Community Strategies," *Journal of Asian American Studies*, vol. 13 no. 3, 2010, pp. 371-387.

³⁸ Capps, Randy et al, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute. (November 2018). Available at: <https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

values.³⁹ The proposed weighted factors, around language and family size, are also connected to deeply racist assumptions about immigrants and their value.

b. Those Coming from Asia and the Pacific Islands Will Be Particularly Harmed

The rule would disproportionately harm families in the U.S. hoping to reunite with loved ones from Asian and Pacific Island nations. The family visa system has been a core part of our immigration system, emphasizing our country's preference for united loving families. We do not believe that borders should be a barrier to families who wish to live together, and the idea that a family could be prevented from unifying because a member is a low income worker, does not have English skills or has a pre-existing condition is an anathema. It also bodes poorly for family stability.⁴⁰

Nearly one third of individuals receiving Lawful Permanent Resident (LPR) status are from Asian and Pacific Island nations.⁴¹ Addition, forty percent of the millions of individuals and families waiting in long backlogs for family-based immigration are from Asia and Pacific Island nations.⁴² This rule could upset the balance of who is able to come from which countries, favoring immigrants from wealthier and therefore, whiter, nations.

This rule would particularly harm U.S. citizens who wish to reunite with older parents. Such admissions account for almost 30 percent of all family-based applications.⁴³ Because the proposed rule negatively weighs a person over the age of 61, families may be irreparably divided and harmed. For example, an estimated half of grandparents provide childcare support.⁴⁴ Yet 72 percent of adults over 61 who recently received

³⁹ O'Keefe, Ed and Anne Gearan, "Trump, condemned for 'shithole' countries remark, denies comment but acknowledges 'tough' language," Washington Post. (January 13, 2018). Available at: https://www.washingtonpost.com/politics/trump-acknowledges-tough-language-but-appears-to-deny-shithole-remark/2018/01/12/c7131dae-f796-11e7-beb6-c8d48830c54d_story.html?utm_term=.90d97616e6b2

⁴⁰ "Family Reunification," International Organization for Migration. Available at: https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Family-reunification.pdf

⁴¹ "2017 Yearbook of Immigration Statistics", Department of Homeland Security. (2017). Available at: <https://www.dhs.gov/immigration-statistics/yearbook/2016>

⁴² "Annual Report of Immigrant Visa Applicants," Department of State. (2017). Available at: https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf

⁴³ "2017 Yearbook of Immigration Statistics," Dept. of Homeland Security, Office of Immigration Statistics, , Table 7, available at www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf with Immigration & Naturalization Service, Office of Policy & Planning, Legal Immigration, Fiscal Year 1997, Table 1, available at www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf;

⁴⁴ Guzman, Lina, "Grandma and Grandpa Taking Care of the Kids: Patterns of Involvement," Child Trends, (July 2004). Available at: <https://www.childtrends.org/wp-content/uploads/2004/07/grandparentsrb.pdf>

green cards had two or more negative factors proposed in this rule.⁴⁵ The family visa system is relied upon by millions of AAPI families DHS instead should be making it easier for family members to reunite, instead of the decades some currently must wait.⁴⁶

Research by the Migration Policy Institute illustrates just how dramatically the proposed rule's new standards for the totality of circumstance test would reshape the country's immigration system. Of green card holders who received status within the past 5 years through non-humanitarian processes, more than one in three had at least one factor that would be negatively weighed in this proposed rule, 43 percent had at least two and 17 percent had at least three.⁴⁷ 41 percent of recent green card holders from Asian countries had at least two negative factors.

c. This Rule Discriminates Against AAPIs with Pre-Existing Conditions

This rule would discriminate against people with pre-existing conditions who would like to enter the U.S. or adjust their status, contrary to our long held values as a country. DHS uses the same justification that insurance companies previously used, but are largely now prohibited from doing so by the Affordable Care Act, by using CDC data on expensive health conditions. By looking at the ability of a person's existing health conditions in relation to their ability to work or afford treatment with private health insurance, this proposal would not only hurt those who may not be in perfect health, but also family members who may be working to reunite with them. AAPIs who have a health condition but may not have an official diagnosis, such as the 7.9% of AAs with diabetes, may fear that getting a diagnoses could hurt their chances of getting a green card.⁴⁸ This could lead to even more expensive treatments down the road and delayed access to care, undermining economic sufficiency.

For conditions such as HIV, the consequences of avoiding diagnoses and treatment may be deadly. Of the 15,800 AAs estimated to be living with HIV in the United States in 2015, only 80 percent had received a diagnosis, a lower percentage than for any other race/ethnicity.⁴⁹ Negatively weighting those with health conditions would, in effect, discriminate against people with historically protected classes or where efforts have

⁴⁵ Capps, Randy et al, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute. (November 2018). Available at:

<https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

⁴⁶ "America's Broken Family Immigration System and its Impact on Asian Americans," Asian Americans Advancing Justice - AAJC. Available at: <https://advancingjustice-aaajc.org/sites/default/files/2016-09/Asian%20Americans%20and%20the%20Family-based%20Immigration%20System.pdf>

⁴⁷ Capps, Randy et al, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute. (November 2018). Available at:

<https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

⁴⁸ "Diabetes and Asians and Pacific Islanders," Office of Minority Health. Available at:

<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=48>

⁴⁹ "HIV Among Asians," Centers for Disease Control and Prevention. Available at:

<https://www.cdc.gov/hiv/group/raciaethnic/asians/index.html>

explicitly lifted restrictions on their immigration into the U.S. like those with disabilities and people with HIV/AIDS.⁵⁰

V. The Inclusion of English Proficiency as a Negative Factor is Harmful and Unjustified

DHS proposes, for the first time, to add English proficiency as a weighted factor in public charge determination. This poorly justified and unprecedented addition will make it much harder for families to unite in this country. Its inclusion disproportionately harms AAPI immigrants and other populations with high levels of limited English proficiency. 29 percent of AAs and 8.2 percent of NHPs are limited English proficient (LEP). We believe the presence of any person in this country, regardless of their English skills, is not a burden but rather a contribution to the vibrant and rich landscape that makes up the United States of America.

a. The Public Charge Proposal Stands in Stark Contrast to Federal Civil Rights Laws Prohibiting Discrimination on the basis of English Proficiency

The U.S. is not a country with a national language. There is no law that allows the government to preference, in such a broad aspect of the immigration process, those who speak English over those who are LEP. While English proficiency is required in the naturalization process, there are exemptions for older adults. The decision by Congress to include that requirement in citizenship applications but not immigration or visas furthers weighs against this proposed rule.

In contrast to this proposal, there are clear federal civil rights protections protecting LEP persons from discrimination on the basis of English proficiency. Title VI, 42 U.S.C. § 2000d of the Civil Rights Act prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. Title VII, 42 U.S.C. § 2000e of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The Supreme Court has interpreted that discrimination on the basis of language or English proficiency is a form of national origin discrimination. Executive Order 13166 provides that all persons who are LEP should have meaningful access to federally conducted and federally funded programs and activities and directs federal agencies to ensure they are in compliance.

b. The English Language Proposal is Not Supported by the Agency's Justification

The public charge statute does not include English proficiency as a factor to be considered in an individual's assessment and instead refers only to "education and skills," among other factors. The agency offers a limited number of justifications for its proposal to add English proficiency to the list of factors.

⁵⁰ Kidder, Rebecca, "Administrative Discretion Gone Awry: The Reintroduction of the Public Charge Exclusion for HIV-Positive Refugees," *The Yale Law Journal*; 106, 2; pg. 389. (November 1996).

For example, the agency states that those who cannot “speak English may be unable to obtain employment in areas where only English is spoken.” There is a significant difference between English proficiency and having no ability to speak the language, which the agency appears to conflate. Many individuals have limited, but some English proficiency are able to serve many employment roles. Second, the U.S. is a deeply multilingual country, where 63 million people speak a language other than English at home. In fact, there are at least 60 counties in the United States where over 50 percent of the population speaks a language other than English including some of the most heavily populated.⁵¹ There are myriad of areas where a person who speaks a non-English language can meaningfully contribute both in employment and civic society.

DHS also neglects to consider, in selecting English skills as a factor, that because public charge is only supposed to be forward looking in its assessment, those coming with limited English proficiency may soon improve their language skills. In fact, current generations of immigrants are learning English faster than previous ones.⁵²

DHS cites the 2014 Survey of Income and Program Participation data about the use of benefits by populations at various levels of English language ability. Yet DHS fails to provide any causal linkage between the data cited and its conclusions and further, fails to consider alternative reasons that people who are more limited English proficient may be more likely to access benefits. For example, states such as New York and California, which have higher numbers of LEP populations, also have higher income thresholds for Medicaid. In addition, DHS claims that “numerous studies have shown that immigrants’ English language proficiency or ability to acquire English proficiency directly correlate to a newcomer’s economic assimilation into the United States,” yet three out of the four studies cited use data derived from Europe, while the fourth relies on Current Population Survey data nearly 30 years old. This evidence is insufficient to support DHS’ proposed change.

In addition, by proposing to include use of housing assistance, Medicaid and SNAP in public charge determinations, DHS is likely making it more difficult for people who are LEP to improve their skills through the likes of English language classes. Current barriers to education already makes access to these courses difficult, but by preventing people from accessing health care, increasing hunger or creating home instability, this proposed rule could cause affected populations to deprioritize skills development.⁵³

⁵¹ 2012-2016 American Community Survey Estimates, Table S1601

⁵² "The Integration of Immigrants into American Society", National Academies of Sciences, Engineering and Medicine. (September 2015). Available at: www.sites.nationalacademies.org/cs/groups/dbasseite/documents/webpage/dbasse_168160.pdf?_ga=2.11215293.882178570.1542820870-1683102172.1542820870

⁵³ Ludden, Jennifer, "Barriers Abound for Immigrants Learning English," National Public Radio. (September 11, 2007). Available at: <https://www.npr.org/templates/story/story.php?storyId=14330106>

Finally, by giving de-facto preference to individuals from English speaking nations, DHS is unraveling the careful balancing that Congress created to move us away from the racist quota system.

c. The Proposed Public Charge Bond Violates Our Country's Core Values

APIAHF strongly and unequivocally opposes this rule, not only because it is baseless, poor policy and damages communities, but also because it is abhorrent in privileging people on the basis of their income. Under this rule, in violation of our values, laws and national benefit, the U.S. will be making it clear that only the wealthy are welcome.

For example, DHS proposes to issue public charge bonds that an individual applying for immigration status could use, at FR 51220. The minimum bond level would be \$10,000, adjusted annually for inflation. This high amount would be considered unaffordable for almost any family. Individuals come to the U.S. for many reasons, such as uniting with family, for a better sense of safety or looking for economic opportunity. Very few come because they are rich. Yet, this proposed rule shifts our immigration system from one where most come for reasons of family or employment to one that presupposes wealth is more important than the myriad of culture, knowledge and experience that immigrants have brought to this country for a century. AAPIs are deeply diverse, driven by the fact that, over generations, their origins have shifted between countries. AA subgroups range from 5% foreign born (for Okinawans) to 91% (for Bhutanese) while PIs range from 5% (for Guamanian or Chamorros) to 63% (for Melanesians).⁵⁴ The diverse and changing fabric of AAPI immigrants will be forever altered for the worse, likely made less diverse and static, if our immigration system becomes a judge of net worth.

DHS requests comments on whether this bond amount should be higher or lower, and any ranges, as well as on any aspects of the public charge bond and public charge bond process. Creating what amounts to a wealth test creates an environment where wealthy immigrants are given special processes, beyond any set out in law, to avoid what others face. Given that wealthy immigrants are predominately from Canada and European countries, the \$10,000 bond creates an environment where white immigrants are privileged above those coming from nations where people of color typically originate from.⁵⁵ As discussed in more detail below, this aspect of the rule builds on a racist history of U.S. immigration policy that has discriminated against, among others, those originating from Asian and Pacific Island countries.

The evidence provided by DHS in favor of any public good from these bonds is weak or nonexistent. We can look to the broader experience in policy around the use of bonds for examples of why they are a poor idea. Years of reliance on monetary bonds in the

⁵⁴ "AAPI Data Quick Stats," AAPI Data. Available at: <http://aapidata.com/stats/national/national-nativity-aj/>

⁵⁵ Keister, Lisa and Brian Aronson, "Immigrants in the one percent: The national origin of top wealth owners," PLoS ONE 12(2). (February 23, 2017). Available at: <https://journals.plos.org/plosone/article/metrics?id=10.1371/journal.pone.0172876#citedHeader>

criminal pretrial context has demonstrated the critical importance of empirical study identifying both predictors and effective mitigators of risk.⁵⁶ If a family pays a public charge bond and then needs public assistance, say to address health or hunger needs, they could be forced to choose between serious long term financial consequences or long term hardship. This is assuming a best case scenario, where a family avoids the numerous pitfalls in the bail bond market of unscrupulous businesses.⁵⁷

As a racial equity organization, we are deeply concerned that bonds have typically had a disproportionately negative impact on communities of color and their families.⁵⁸ Studies of the impact on bonds have demonstrated their negative financial impact on both families and localities in New Orleans,⁵⁹ Maryland,⁶⁰ and Philadelphia.⁶¹ It is our view that this further reflects the proposed rule's effective animus towards non-white immigrants. Potentially forcing families, who currently would not be considered public charges under the definition in the 1999 field guidance, to rely on bonds could exacerbate other problems already created on this rule, depressing the ability for immigrants to succeed in this country.

VI. The Proposed Rule Would Punish AAPI Immigrant Families for Meeting their Basic Needs and Create a Chilling Effect, Threatening the Health and Well-being of Millions of AAPI Families and Public Health

This proposed rule would have a deep impact on the health of millions of families in the U.S. More than half of green cards are issued to individuals already residing in this country, though the impact spreads far beyond those people.⁶² Based on both historical review and reporting of current trends, if implemented, this rule would lead to massive disenrollment from public benefits, an extraordinary impact for a regulation coming from an agency with no jurisdiction over the benefits its purports to use in its

⁵⁶ See Denise L. Gilman, To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial immigration Detention, 92 Ind. L.J. 157, 205 (2016) ("Loose the Bonds").

⁵⁷ Elgion, John, "For Poor, Bail System Can Be an Obstacle to Freedom," New York Times, (January 9, 2011). Available at: <https://www.nytimes.com/2011/01/10/nyregion/10bailbonds.html>

⁵⁸ For example, see Bryan, Isaac et al, "The Price for Freedom: Bail in the City of L.A.," USLA Bunche Center for African American Studies. Available at: www.milliondollarhoods.org/wp-content/uploads/2017/10/MDH_Bail-Report_Dec-4-2017.pdf

⁵⁹ Laisne, Mathilde, et al, "Past Due Examining the Costs and Consequences of Charging for Justice in New Orleans," Vera Institute of Justice. (January 2017). Available at: <https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans>

⁶⁰ Gupta, Arpit et al, "The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions," Maryland Office of the Public Defender. (November 2016). Available at: www.opd.state.md.us/Portals/0/Downloads/High%20Cost%20of%20Bail.pdf

⁶¹ Butkovitz, Alan, "Economic Impacts of Cash Bail on the City of Philadelphia," Office of the Controller of Philadelphia. (October 2017). Available at: <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c4714f10-61c4-2511-b54e-12bc81587644>

⁶² Cohn, D'Vera and Neil Ruiz, "More than half of new green cards go to people already living in the U.S.," Pew Research Center. (July 6, 2017). Available at: <http://www.pewresearch.org/fact-tank/2017/07/06/more-than-half-of-new-green-cards-go-to-people-already-living-in-the-u-s/>

immigration determinations. Because AAs are the fastest growing immigrant group, the impacts described below on families in the communities we work with will only increase with time.⁶³

a. The Proposed Additional Programs Added as Factors in Public Charge Determinations Will Hurt Families and Are Unnecessary

APIAHF opposes this rule because we know one of the most significant changes proposed by DHS, to dramatically expand the number of programs used in the public charge determination will mean less access to health for those who need it. As we discuss in this section, the addition of Medicaid, Medicare LIS, SNAP and housing assistance will harm the well-being AAPI families.

DHS asks for comments on whether additional programs should be counted, and whether use of other benefits should be included in the totality of circumstances test. This question is posed at FR 51173. We oppose the use of any benefits weighted as proposed in this rule, whether those that DHS is explicitly adding or any that are not mentioned. Any additional programs would multiply the already severe problems described in these comments.

b. The Rule Would Particularly Hurt Health and Access to Food for AAPIs

This proposal would hurt AAPIs who, without public assistance, would face hunger and threats to their health. Our organization is deeply familiar with the fact that millions of AAPI families already have limited or no access to health care or harmful food insecurity. Some AAPI subgroups face extremely high uninsured rates, such as Micronesians who are 13.1 percent uninsured and Nepalese who are 12.7 percent.⁶⁴ 9 percent of AAs and 24 percent of NHPs are food insecure.⁶⁵ However, because of the model minority stereotype, these groups are already at risk of not having their needs understood or met.⁶⁶ Yet this proposal would make things worse by de-facto restricting access to assistance. One estimate found that a 10 percentage point cut in families receiving public assistance leads to a five percentage point increase in food-insecure households.⁶⁷

⁶³ Lopez, Gustavo, Neil Ruiz and Eileen Patten, "Key facts about Asian Americans, a diverse and growing population," Pew Research Center. (September 8, 2017. Available at: www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/)

⁶⁴ APIAHF Analysis of 2017 American Community Survey data

⁶⁵ "Food Insecurity Affects Nearly 1 out of Every 10 Asian Americans and Pacific Islanders," AAPI Data. Available at: www.aapidata.com/infographic-food-insecurity-hunger/?fbclid=IwAR2SlqHicVM6lbyeth17oChKklaxzXFvFGNEWzj9M-L71ozdtP4IEYsyOYA

⁶⁶ MB, Becerra, Mshigeni SK, and Becerra BJ, "The Overlooked Burden of Food Insecurity among Asian Americans: Results from the California Health Interview Survey," *Int J Environ Res Public Health*, 15(8):1684. (August 2018). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6121379/>

⁶⁷ Borjas, George J, "Food Insecurity and Public Assistance," *Journal of Public Economics*, pp. 1421 – 1443. (September 2002). Available at: <https://sites.hks.harvard.edu/fs/gborjas/publications/journal/JPUBE2004.pdf>

The Migration Policy Institute has estimated that 1.4 million AAPIs who are not U.S. citizens are members of families who rely on Medicaid and CHIP.⁶⁸ This includes 182,000 children. 523,000 AAPIs who are not yet U.S. citizens are members of families who rely on SNAP to put food on the table. It is possible, or likely, that large numbers of these families would disenroll from Medicaid or SNAP, because either their immigration status would be put at risk or, for a larger population, they experience a chilling effect. Tens of thousands of AAPIs might lose access to food and health care, putting themselves and their families at great risk and blunting their ability to thrive. The share of immigrants facing a public charge determination would increase more than 15 times, from 3 percent of noncitizens to 47 percent. Migration Policy Institute states that, if these families withdraw from benefits, the result could be “higher poverty levels, reeducated access to health care and an increase in severe and chronic health issues.”

It is clear that the rule will lead to disenrollment from Medicaid. In addition, even though the proposed rule does not and should not include CHIP as a public benefit, enrollment in the program would also likely decrease among affected populations. CHIP, “is both a financing source for Medicaid coverage (most CHIP-funded were covered through Medicaid in 2016) and a standalone source of coverage that families often find difficult to distinguish from Medicaid.”⁶⁹

c. The Chilling Effect from the Proposed Rule Will Lead to Families Forgoing Health Insurance

While this rule will have a deep impact on both immigrants who would like to come to this country and those who are here on visas and legally eligible to use public benefits, this rule will also have consequences for individuals who are green card holders or citizens not subject to public charge, but who, nonetheless, will disenroll from benefits that could improve their lives. They may withdraw out of fear for their own status, due to the complexity of this proposed rule or due to misinformation spread by word of mouth, or out of fear that their own use of benefits could impact the immigration status of their loved ones. In a 2018 survey of health care providers in California, more than two-thirds (67 percent) noted an increase in parents’ concerns about enrolling their children in Medi-Cal, WIC and CalFresh, and nearly half (42 percent) reported an increase in skipped scheduled health care appointments.⁷⁰ One doctor in Illinois

⁶⁸ “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use,” Migration Policy Institute. (June 2018). Available at:

<https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>

⁶⁹ Mann, Cindy, Allison Orris and April Greedy, “Medicaid Payments at Risk for Hospitals Under Public Charge,” Manatt Health. (November 11, 2018). Available at:

<https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ>

⁷⁰ “California Children in Immigrant Families: The Health Provider Perspective”, The Children’s Partnership. Available at: <https://www.childrenspartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf>

provided an example of a young boy with heart problems whose parents refused to sign him up for Medicaid out of fear that it might impact his status.⁷¹

DHS itself acknowledges this in the proposed rule, stating that, “individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households.” DHS estimates these disenrollments would cause a loss of \$2.27 billion in government transfer payments annually, yet does not estimate the cost of the consequences of losing these benefits. Still, those fiscal estimates could only be achieved if DHS is assuming populations that are not covered by public charge disenroll, such as U.S. citizens. It is deeply disturbing that DHS uses these savings, that could only be achieved by families not directly impacted by public charge disenrolling, as a reason to implement this rule.

DHS also acknowledges that people may disenroll from state programs, which are not covered generally by this rule, except for cash programs which already count towards public charge determinations. Such an acknowledgement demonstrates the vast impact that this rule will have not just on the federal government, but on state governments that prioritize the health of all their residents, citizen or immigrant. Families that avoid use of state and local programs, which may be more robust than federal, will face further consequences.

Experts in health agree that the number people forgoing public health insurance will be large. According to the Kaiser Family Foundation, the proposed rule “would likely lead to broad decreases in participation in Medicaid and other programs among legal immigrant families and their primarily U.S.-born children beyond those directly affected by the changes.”⁷² Citizen children may also disenroll in an effort, and out of misunderstanding of the public charge process, to protect their own parents. Such actions have been reported already.⁷³

The chilling effect’s impact on discouraging families use of doctors will hurt even those who are not eligible for Medicaid because of their immigration status. When Oregon expanded its Emergency Medicaid program to cover prenatal care for all persons regardless of status, doctors were able to reduce inadequate care and more frequently

⁷¹ Schencker, Lisa, "Illinois doctors say Trump immigration proposal already scaring away patients," Chicago Tribune. (November 30, 2018). Available at: <https://www.chicagotribune.com/business/ct-biz-immigration-proposal-scaring-people-from-medicaid-1202-story.html>

⁷² "Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage," Kaiser Family Foundation. (September 24, 2018). Available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

⁷³ Teague, Courtney, "Napa families consider sacrificing health care to stay in America," Napa Valley Register. (November 25, 2018). Available at: https://napavalleyregister.com/news/local/napa-families-consider-sacrificing-health-care-to-stay-in-america/article_3821c658-8410-58c2-97e8-56005532ea35.html

diagnose gestational diabetes, among other improvements for the health of the fetus.⁷⁴ Families may fear using Emergency Medicaid, hurting their own health.

The rule's impact is not limited to just immigrants, both those coming in and those applying for a visa or a green card, but also to U.S. citizens as the health of children and their parents are intertwined. "Over 19 million or one in four (25%) children live with an immigrant parent, and nearly nine in ten (86%) of these children are citizens"⁷⁵ Those children, and any other family members living with potentially impacted immigrants could be directly hurt, through disenrolling from public assistance, or indirectly, such as if the bread winners in their household forgo care and are unable to work as a result. AAPIs, having more intergenerational households, may be particularly hurt.

d. Similar Policies Have Already Hurt Families

Evidence demonstrates that current immigration policies, like separation of families and immigration raids, already have had a detrimental impact on family wellbeing.⁷⁶ This administration has taken every action to create a hostile environment for families, making it clear that they are not welcome. The stress and alienation that these policies create, exacerbated by hateful language used by white supremacists and other individuals who feel empowered by them, hurts the health of communities who respond by going into hiding and avoiding doctors and other health practitioners.

e. History Teaches us that the Impact will be Widespread

The experiences among immigrant communities the 1990s, including after welfare reform and amongst intentional efforts among certain immigration enforcement agencies to target immigrants for public charge, demonstrate that thousands of immigrants and their families, regardless of whether they are subject to public charge, will likely forgo benefits and access to health and nutrition services.

The passage of the Personal Responsibility and Work Opportunity Act in 1996 (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) drove many of these trends. Though PRWORA had limited eligibility changes that targeted lawfully present qualified immigrants, primarily enacting a five-year bar on some public assistance programs for green card holders, the impacts on enrollment in those programs were disproportionate to its changes to statute. The Urban Institute found that use of public benefits among noncitizen households fell 35 percent between

⁷⁴ Swartz, Jonas, et al., "Oregon's Expansion of Prenatal Care Improved Utilization Among Immigrant Women," *Maternal and Child Health Journal*, pp. 1-10. (July 2018).

⁷⁵ "Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage," Kaiser Family Foundation. (September 24, 2018). Available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

⁷⁶ Artiga, Samantha and Barbara Lyons, "Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being," Kaiser Family Foundation. (Sept 18, 2018). Available at: <https://www.kff.org/disparities-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being/>

1994 and 1997, as compared to 14 percent among U.S. citizen households.⁷⁷ Refugees experienced a comparable decline in benefit use, 33 percent, even though they were exempted from the PWORA restrictions. These declines were seen more in lower income households.

The reduction in use of benefits was seen among those who could be in most need of health insurance. While having negligible impact on women born in the United States, one study found that PWORA increased the proportion of uninsured foreign born unmarried women with low education by up to 10.7 percentage points.⁷⁸

Yet comparisons to experiences in the 1990s likely underestimate the amount of immigrants who would disenroll from public assistance if this proposed rule is finalized. The current political environment has created a sense of fear in immigrant communities not seen before. Immigrants of all types of status report significantly higher psychological stress levels than nonimmigrants because of their negative experiences related to that status.⁷⁹ Our partners working directly in immigrant communities have affirmed this research, many of whom were engaged in this work in the 1990s. The climate of fear could mean disenrollment will be far higher.

f. The Effects of the Proposed Rule Would Move Our Country's Health in the Wrong Direction

Immigrants already face significant barriers to enrolling in public assistance programs, a fact that APIAHF has worked to address throughout its existence. Most recently, APIAHF has invested in helping immigrants, and those working in those communities, navigate the barriers to enrolling in the health insurance marketplaces under the Affordable Care Act. Compared to non-immigrants, these populations face barriers and insufficient resources around language access, income verification, immigration status verification, identify verification and other enrollment processes.⁸⁰ Our community partner organizations spend large amounts of staff time helping immigrant families navigate these barriers. This rule would add additional logistical, mental and legal barriers to

⁷⁷ Fix, Michael E. and Jeffrey S. Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994–97", The Urban Institute. (March 1, 1999). Available at: <https://www.urban.org/sites/default/files/publication/69781/408086-Trends-in-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf>

⁷⁸ Kaushal, Neeraj and Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," Health Services Research 40, no. 3 (June 2005): 697–722. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>

⁷⁹ Roche, Kathleen et al, "Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents," Journal of Adolescent Health 62:5 525-531. (May 2018). Available at: [https://www.jahonline.org/article/S1054-139X\(18\)30054-5/fulltext](https://www.jahonline.org/article/S1054-139X(18)30054-5/fulltext)

⁸⁰ "Improving the Road to ACA Coverage: Lessons Learned on Outreach, Education, and Enrollment for Asian American, Native Hawaiian, and Pacific Islander Communities," Asian & Pacific Islander American Health Forum. (September 2014). Available at: <https://www.apiahf.org/resource/improving-the-road-to-aca-coverage-lessons-learned-on-outreach-education-and-enrollment-for-asian-american-native-hawaiian-and-pacific-islander-communities/>

immigrants looking to access health insurance they are eligible for. These barriers would not only build on the existing ones that contribute to the higher uninsured rates experienced by immigrants, but also to the time community based organizations must spend assisting them.

According to the Kaiser Family Foundation, “among the low-income nonelderly population, lawfully present immigrants are less likely than citizens to have Medicaid or CHIP. These lower coverage rates reflect eligibility restrictions for immigrants that require many otherwise eligible lawfully present immigrants to wait five years after obtaining lawful status before they may enroll as well as barriers to enrollment for eligible immigrants, including fear.”⁸¹ These barriers need to be accounted for in assessing the impact this proposed rule will have on immigrants and are largely ignored by DHS.

In recent years, thanks to legislation like the Affordable Care Act, we have seen uninsured rates drop. Research has shown that the disparities in uninsured for many AA and NHPI populations has been nearly eliminated at certain points in time.⁸² Between 2014 and 2017, the uninsured rate for non-citizens in the U.S. dropped from 39.9 percent to 31.4 percent.⁸³ While we believe this is still too high, this proposed rule would almost certainly reverse that progress.

Much of this reduction in the uninsured is due to the work of AA and NHPI community based organizations that worked directly in neighborhoods to ensure their eligible clients enrolled, including many of APIAHF’s partners. This work, building on previous decades of work helping AA and NHPis understand health care options, comes in the face of how difficult it is for immigrants to access health care. Immigrants already face far too many existing restrictions on access to health care, both legal and cultural. Policymakers should be working to alleviate these barriers to improve their abilities, and their children’s, to contribute to their communities.

In addition, we express our concern that the proposed rule would harm another innovation in health care that has moved access to insurance forward. A key feature that Congress chose to include in the ACA was the concept of a unified eligibility and enrollment portal. For many consumers, this portal is healthcare.gov or a state equivalent. A consumer applying for health insurance through the enrollment portal will be determined eligible for different programs, based on their income and other characteristics, including CHIP or Medicaid, but also private insurance. Consumers may not know which program they will end up eligible for. Yet this proposed rule would penalize immigrants who have simply applied for Medicaid. We believe this could lead

⁸¹ "Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage," Kaiser Family Foundation. (September 24, 2018). Available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

⁸² Park JJ et al, “Health Insurance for Asian Americans, Native Hawaiians, and Pacific Islanders Under the Affordable Care Act,” JAMA Intern Med. 2018;178(8):1128–1129.

⁸³ APIAHF calculations of 2014 and 2017 American Community Survey 1 Year Estimates.

to, and our partners have reported evidence of, fear of applying for any type of health insurance.

g. Expanding, not Retracting Health Coverage, should be Our National Goal

As outlined in the U.S. Department of Health and Human Services Strategic Plan, HHS has a number of objectives relating to “promoting affordable healthcare,” “improving American’s access to healthcare” because “for a nation to thrive, its population must be healthy. Poor health reduces one’s ability to attend school, care for one’s family, or work. Without healthcare services—including physical, behavioral, and oral healthcare—to help improve health, Americans are at greater risk of poor health and human services outcomes.”⁸⁴ As such, the proposed rule directly contradicts the stated objectives of HHS. It is shocking that a rule, with as massive an impact on health as the one proposed here, would be promulgated by an agency without jurisdiction over health in direct opposition to the objectives of the agency that does.

Furthermore, studies on the impact of expanding Medicaid demonstrate why this proposed rule moves the country in the wrong direction, damaging our individual and public health and the economy:

- Expansion of Medicaid led to a greater number of states providing residential treatment and opioid use disorder treatments.⁸⁵
- In California, Medicaid expansion led to an 11 percent reduction in the number of payday loans.⁸⁶ These loans can have a detrimental impact on a person’s health and economic circumstances, making it harder for them to thrive.⁸⁷
- In Oregon, those enrolled in the Medicaid expansion (through random selection) were more likely than their peers to use preventative services, reducing their chances of having costly medical expenses in the future, and had little no catastrophic out of pocket medical expenditures.⁸⁸

⁸⁴ "Strategic Goal 1: Reform, Strengthen, and Modernize the Nation’s Healthcare System," United States Department of Health and Human Services. Available at:

<https://www.hhs.gov/about/strategic-plan/strategic-goal-1/index.html>

⁸⁵ Andrews, Christina M, et al., "Medicaid Benefits For Addiction Treatment Expanded After Implementation of the Affordable Care Act," Health Affairs. (August 2018). Available at:

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.0272>

⁸⁶ Allen, Heidi, "Early Medicaid Expansion Associated with Reduction Payday Borrowing in California," Health Affairs. (October 2017).

<https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0369>

⁸⁷ "Drowning in Debt: A Health Impact Assessment of How Payday Loan Reforms Improve the Health of Minnesota’s Most Vulnerable," Human Impact Partners. (March 2016). Available at:

<https://www.pewtrusts.org/-/media/assets/external-sites/health-impact-project/hip-2016-payday-lending-report.pdf?la=en&hash=1D0A4C3077F21CE1EA183BC0E0DCA02DB524A25F>

⁸⁸ Baicker, Katherine, et al., "The Oregon Experiment - Effects of Medicaid on Clinical Outcomes," The New England Journal of Medicine), pp. 1713-1722. (May 2013). Available at:

<https://www.nejm.org/doi/full/10.1056/nejmsa1212321>

- Nationally, one study found that the ACA’s Medicaid expansion led a \$3.4 billion reduction in unpaid medical bills.⁸⁹ It has been linked to a \$1,140 per person reduction in collections billing.⁹⁰
- Research shows that gaining access to Medicaid increases voter participation.⁹¹ Contrary to DHS’s goals, reducing the number of immigrants on public benefits could hurt their integration into the country.

h. The Harm to Health Would Also Come from the Inclusion of Housing Programs

The inclusion of the Section 8 Housing Voucher, Section 8 Project Based Vouchers and Public Housing programs in public charge determinations will have a negative impact not just on the ability for families to find an affordable home, but also on their health and economic well-being.

There is a long and growing body of research that ties health and housing. Having a place to live allows families to concentrate resources on putting nutritious food on the table, treating health conditions and otherwise contributing to a stable lifestyle.⁹² The proposed rule purports to encourage entry of immigrants who can rely on private health insurance, such as employer sponsored health insurance. However, for many families, their housing and employment are deeply linked, and they may be unable to sustain a job if they lose access to housing assistance. In fact, expansion of affordable housing can reduce Medicaid expenditures.⁹³ Housing assistance has also been linked with lower uninsured rates.⁹⁴

Our housing problems in this country are already deep. In 2015, 38.9 million households in the U.S. were “cost burdened,” meaning they paid more than 30 percent of their income on housing, while 18.8 million households were “severely cost-burdened,”

⁸⁹ Brevoort, Kenneth, Daniel Grodzicki, and Martin B. Hackmann, "Medicaid and Financial Health," National Bureau of Economic Research. (November 2017). Available at: <https://www.nber.org/papers/w24002.pdf>

⁹⁰ Hu, Luoia, et al, "The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing," National Bureau of Economic Research. (February 2018). Available at: <https://www.nber.org/papers/w22170.pdf>

⁹¹ Baicker, Katherine and Amy Finkelstein, "The Impact of Medicaid Expansion on Voter Participation: Evidence from the Oregon Health Insurance Experiment," National Bureau of Economic Research. (November 2018). Available at: <https://www.nber.org/papers/w25244.pdf>

⁹² Maqbool, Nabihah, Janet Viveiros, and Mindy Ault, “The Impacts of Affordable Housing on Health: A Research Summary”, Center for Housing Policy. (2015). Available at: http://www.housingpartners.com/assets/creating_change/http_app.bronto.pdf.

⁹³ "Health in Housing: Exploring the Intersection between Housing and Health Care," Enterprise and the Center for Outcomes Research and Education. (February 2016). Available at: <https://www.enterprisecommunity.org/download?fid=5703&nid=4247>

⁹⁴ Simon, Alan et al, "HUD Housing Assistance Associated With Lower Uninsurance Rates And Unmet Medical Need," Health Affairs 36:6. (June 2017).

meaning they spent over 50 percent of their income on housing.⁹⁵ This proposed rule would likely exacerbate that number, which is already projected to reach 13.1 million for the severely cost burdened in 2025.⁹⁶

In an experiment, participants who were assigned household-based rental vouchers saw reductions in homelessness, crowding, household size, and the incidence of living with relatives or friends. These same participants also experienced an increase in housing mobility, while reducing the number of subsequent moves, and experienced small improvements in neighborhood quality.⁹⁷ In contrast, housing instability is linked to adverse health care outcomes.⁹⁸ Families without stable housing may struggle to simply maintain their health needs, such as having adequate storage for medication and syringes to treat chronic illnesses.⁹⁹

Restricting access to housing assistance limits what neighborhoods families have access to live in, potentially forcing them into low quality or unsafe conditions. Families who are able to move from poverty-segregated neighborhoods have healthier outcomes, such as lowering their body mass index.¹⁰⁰ Moving to better neighborhoods also improves children's future incomes and odds of achieving higher education.¹⁰¹

⁹⁵ The State of the Nation's Housing, Joint Center for Housing Studies of Harvard University. (2017). Available at:

www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf

⁹⁶ Charette, Allison et al, "Projecting Trends in Severely Cost-Burdened Renters: 2015–2025," Enterprise and the Joint Center for Housing Studies of Harvard University. (2015). Available at: www.jchs.harvard.edu/sites/default/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf

⁹⁷ Michelle Wood, Jennifer Turnham, and Gregory Mills, "Housing Affordability and Family Well-Being: Results from the housing voucher evaluation," *Housing Policy Debate*, pp. 367-412. (2008). Available at:

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.530.3116&rep=rep1&type=pdf>

⁹⁸ Sandel, Megan, et al, "Unstable Housing and Caregiver and Child Health in Renter Families," *Pediatrics* 141:2. (February 2018). Available at:

pediatrics.aappublications.org/content/141/2/e20172199

⁹⁹ Maqbool, Nabihah, Janet Viveiros, and Mindy Ault, "The Impacts of Affordable Housing on Health: A Research Summary," *Insights from Housing Policy Research*. (April 2015). Available at: <https://www.nhc.org/wp-content/uploads/2017/03/The-Impacts-of-Affordable-Housing-on-Health-A-Research-Summary.pdf>

¹⁰⁰ Ludwig, Jens et al, "Neighborhoods, Obesity, and Diabetes — A Randomized Social Experiment," *New England Journal of Medicine*. (October 20, 2011). Available at:

<https://www.nejm.org/doi/full/10.1056/NEJMsa1103216>

¹⁰¹ Chetty, Raj, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project," *American Economic Review*, 106:4. (2016). Available at: <https://scholar.harvard.edu/hendren/publications/effects-exposure-better-neighborhoods-children-new-evidence-moving-opportunity>

Recognizing these outcomes, states have moved to pay for housing services through Medicaid, to promising results.¹⁰² Health systems are following similar trends.¹⁰³ This proposed rule would doubly undermine these efforts by deterring families with immigrant members from seeking housing *and* medical services.

i. The Way DHS Proposes Measuring Use of Benefits Makes Little Sense for Communities or Policy

DHS proposes to define use of a public benefit, for “nonmonetizable” programs like Medicaid, to be 12 months within a 36-month period. We oppose not only the addition of Medicaid as a benefit in public charge determinations, but also this method of measuring whether someone has used the program.

Families do not think about health care by this sort of time constraint and nor should they. In fact, it is critical to public health that access to health insurance is consistent. For example, one study found that adults with a usual source of care had a 2.8 times greater chance of having a flu shot than those who did not, men had a 10 times greater chance of receiving a PSA test, and women had a 3.9 times greater chance of receiving a breast exam.¹⁰⁴ DHS’ proposal would encourage families to time their use of Medicaid rather than access it consistently, effectively prioritizing mitigation over prevention. The agency asks, at FR 51200, whether the 36-month lookback is the correct amount of time to consider. In fact, we believe that no period of time is appropriate. The agency cites TANF data, which is a poor basis for comparison considering the vastly different populations who use TANF (which has eligibility levels as low as 16.8 percent of poverty).¹⁰⁵ It would be inappropriate in general for DHS to make policy decisions that force officers to make assumptions, based on any generalized research, about a particular person’s likelihood to use future benefits based on their past use. Each person’s situation is unique and should be treated as such.

The rule also ignores the fact that use of public benefits may make a person more likely to contribute to society in the future. For one example, the expansion of Medicaid in

¹⁰² Spencer, Anna, James Lloyd and Tricia McGinnis, "Using Medicaid Resources to Pay for Health Related Supportive Services: Early Lessons", Center for Health Care Strategies. (December 2015). Available at: www.chcs.org/media/Supportive-Services-Brief-Final-120315.pdf

¹⁰³ Hostetter, Martha and Sarah Klein, "In Focus: Hospitals Invest in Building Stronger, Healthier Communities," Commonwealth Fund. (September 23, 2016. Available at: https://www.commonwealthfund.org/publications/newsletter-article/2016/sep/focus-hospitals-invest-building-stronger-healthier?redirect_source=/publications/newsletters/transforming-care/2016/september/in-focus

¹⁰⁴ Blewett, Lynn et al, "When a Usual Source of Care and Usual Provider Matter: Adult Prevention and Screening Services," J Gen Intern Med; 23(9): 1354–1360. (2008 Sep).

¹⁰⁵ Falk, Gene, "Temporary Assistance for Needy Families (TANF): Eligibility and Benefit Amounts in State TANF Cash Assistance Programs," Congressional Research Service. (July 22, 2014), Available at: <https://fas.org/sgp/crs/misc/R43634.pdf>

Pennsylvania has led to significant health and social benefits for participants.¹⁰⁶ Expansion is also linked to a decline in home payment delinquency's, likely reducing the odds of relying on housing assistance.¹⁰⁷ The negligence of the agency to consider that inclusion of the additional benefits may make affected individuals more likely to gain employment or less likely to, in the future, have expensive health costs, is a problematic oversight.

DHS has proposed that benefits used before the rule is published, and up to 60 days after, if it is finalized, would not count towards an individual's public charge determination. Yet this has done little to quell the chilling effect, as most families do not, and should not be expected to, understand the intricacies of federal rulemaking. Our partners and news agencies have already detailed stories of immigrants declining benefits, even before the rule was officially proposed. For example, Politico reported on September 3rd that WIC agencies in 18 states reported drops of up to 20 percent in enrollment.¹⁰⁸ DHS's approach to immigrant communities appears to operate under the false expectations that families, many of whom have little experience with how public assistance works in the U.S., will behave as if they understand the complex rules it is proposing.

The agency asks for comments at FR 51210 as to whether receipt of public benefits currently counted as public charge factors prior to the rule being finalized should be considered a negative benefit or in some other way. We believe the public would be best served by simply leaving the current guidance in place. Receipt of cash benefits and SSI should remain the basis for public charge determinations.

j. The Proposed Rule is Already Harming Communities. If Finalized, it Will Harm Even More.

Rumors of this rule have circulated since the President took office, and as documented by research, media reports and our own partners, those rumors have already led to harmful health impacts on families and communities. Immigrant communities, sharing information through social media and word of mouth, in addition to newspapers published non-English languages, are well aware of a threat to their ability to stay in the U.S. because of use of health assistance or public benefits.

¹⁰⁶ Hom, Jeffrey et al, "New Medicaid Enrollees See Health and Social Benefits in Pennsylvania's Expansion," Inquiry. (Inquiry. 2016 Jan-Dec). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5798735/>

¹⁰⁷ Gallagher, Emily, Radhakrishnan Gopalan, and Michal Grinstein-Weiss, "The Effect of Health Insurance on Home Payment Delinquency: Evidence from ACA Marketplace Subsidies, Berkley HAAS School of Business. (November 27, 2018). Available at: www.haas.berkeley.edu/groups/finance/seminars/RD_Marketplace.pdf?fbclid=IwAR1HaOsn1Yd6Qc017Yp5UUQGfOP5X7TsBnm5zSt53a9FucK6vvgVYr6j_IA

¹⁰⁸ Bottemiller Evich, Helena, "Immigrants, fearing Trump crackdown, drop out of nutrition programs," Politico. (October 3, 2018). Available at: <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>

WIC clinics have reported reduced caseloads. Another study found that after years of increasing rates, in the first half of 2018, SNAP enrollment among immigrant families in the U.S. for less than five years, potentially the most affected by this proposed rule, decreased by at least 10 percent.¹⁰⁹ Interviews with 20 families of detained or deported immigrants report struggling to put food on the table and elevated levels of stress, anxiety and depression.¹¹⁰ As our partners have also observed, immigrants are also avoiding health care services.¹¹¹

DHS must not only withdraw the rule, but take steps to publicly clarify that the existing guidance will stand without modification in policy or practice. Without taking such action, the negative impact of the mere proposal of these changes will continue to hurt families. History has demonstrated the need for this level of clarification, as one account from a group after the 1999 guidance describes a woman who, even after knowing the clarification, said she would refuse to enroll in health programs due to “the fear of punitive governmental action.”¹¹²

k. The Proposed Rule Will Drive Immigrants away from Public Health Services and Providers.

Not only do we believe this rule will lead to immigrants avoiding health insurance and care, it will also likely lead to families avoiding medical treatment and other health services altogether. For example, individuals who are HIV/AIDS positive may avoid treatment. One report provides a foreboding example:

“At African Services Committee this month, one recently diagnosed individual confided with their case manager that they were considering waiting to begin antiretroviral therapy with medication obtained through ADAP until they “felt sick enough,” and two others have requested to be taken off a New York City-based program that provides housing assistance to qualifying immigrants living with HIV/AIDS, all because they want to be sure that their green card application will be approved, thus making them eligible to file for family-based immigration visas so their children can join them here in the U.S.”¹¹³

¹⁰⁹ Scott, Dylan, “Study suggests Trump is scaring immigrant families off food stamps,” Vox. (November 15, 2018). Available at: <https://www.vox.com/policy-and-politics/2018/11/15/18094901/trump-immigration-policy-food-stamps-snap>

¹¹⁰ Artiga, Samantha and Barbara Lyons, “Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being,” Kaiser Family Foundation. (September 18, 2018). Available at: <https://www.kff.org/disparities-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being/>

¹¹¹ Goldberg, Dan, Victoria Colliver and Renuka Rayasam, “‘Public charge’ rule keeps immigrants away from health programs, advocates say,” Politico Pro. (November 20, 2018).

¹¹² Park, Lisa Sun-Hee, “Challenging Public Charge Policy; Coalitional Immigrant Community Strategies,” *Journal of Asian American Studies*, vol. 13 no. 3, 2010, pp. 371-387.

¹¹³ Lugg, Amanda, “Newly Proposed ‘Public Charge’ Rule Could Be Devastating to HIV-Positive Immigrants,” *The Body*. (May 16, 2018). Available at: www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html?ic=tbhtrump

Providers, especially those that are part of the safety net, would face greater bad debt as immigrant patients are driven away, due to fear and a choice between their immigration status and accessing care. This will hurt the ability of safety net providers to continue serving their patients and undermine public health.

For example, Community Health Centers serve 28 million patients, including many AAPIs.¹¹⁴ An analysis of 30 AAPI-serving health centers shows that up to 86,000 patients may disenroll from Medicaid, which translates to approximately \$65 million dollars.¹¹⁵ Health Centers—who generally run on margins of less than 1 percent—will have to cover these increased costs either with federal grants or by tapping into other vital funding streams that support the Health Center model of care.¹¹⁶ Studies show that comparably, care not provided at a health center costs \$2371 more per patient per year. This proposed policy only makes patients costlier to treat in the long run, both for the individual and the U.S. taxpayer.¹¹⁷

DHS notes that “the rule might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D low income subsidy program, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.” This encompasses many industries in the American economy, yet DHS does not estimate what the cost of this rule could be on them.

However, DHS is correct about the impact on those sectors, and in addition, hospitals, providers and states stand to lose billions of dollars in Medicaid and CHIP payments as a result of this rule.¹¹⁸ Health care services being paid for by those federal reimbursements will be made up for by either hospital bad debt or state services, burdening those entities or denying health care to the affected populations. This will result in poor health and exacerbated health care conditions in the future that are more

¹¹⁴ "Joint Statement of America's Health Centers Opposing Public Charge Proposal." October 10, 2018. Available at: www.nachc.org/news/joint-statement-of-americas-health-centers-opposing-public-charge-proposal/

¹¹⁵ Analysis of the Asian Pacific American Community Health Organizations

¹¹⁶ Nocon, RS et al, "Health Care Use and Spending for Medicaid Enrollees in Federally Qualified Health Centers Versus Other Primary Care Settings," American Journal of Public Health, 106(11):1981-1989. (November 2016). Available at: <https://www.ncbi.nlm.nih.gov/pubmed/27631748>

¹¹⁷ Nocon, RS et al, "Health Care Use and Spending for Medicaid Enrollees in Federally Qualified Health Centers Versus Other Primary Care Settings," Am J Public Health;106(11):1981-1989. (November 2016).

¹¹⁸ Teague, Courtney, "Napa families consider sacrificing health care to stay in America," Napa Valley Register. (November 25, 2018). Available at: https://napavalleyregister.com/news/local/napa-families-consider-sacrificing-health-care-to-stay-in-america/article_3821c658-8410-58c2-97e8-56005532ea35.html

likely to require emergency room treatment. Emergency room care is vastly more expensive to all payers compared to routine, preventive care.¹¹⁹

Hospital bad debt caused by the proposed rule could also destabilize communities and local economies. If hospitals close or reduce their capacities because of their revenue loss, communities suffer both a loss of a nearby provider and jobs at that facility, particularly given that hospital systems may be the largest employers in some areas.¹²⁰

I. Community Based Organizations Report the Harmful Effects This Proposed Rule is Already Having on Their Clients and Resources

APIAHF has longstanding relationships with Community Based Organizations (CBOs) that serve AAPIs around the country. These organizations are the front lines for the implementation of health policy and programs and are often able to best describe how policy proposals will impact their clients, who are often immigrants, limited English proficient and/or facing chronic health problems, poverty and other issues. According our CBO partners, this rule will exacerbate the fear and reluctance to access health care that already exists among their clients, hurting both the health of those clients and the ability of the organizations to fulfill their missions.

APIAHF consulted with several of our CBO partners about the impact that this proposed rule is having on their agencies. Following are summaries of our conversations with these organizations.

- *Monsoon Asian and Pacific Islanders in Solidarity. Located in Des Moines, IA. We spoke with Lata D’Mello, Assistant Director:* The organization has found that refugees are choosing not to apply or reapply for public assistance. Other clients who are not refugees fear applying for citizenship. One anecdote staff provided was a recent call from a hospital regarding a patient who had severe burns but was uninsured. The patient, who was Filipina, did not want to apply for Medicaid because of fear around her immigration status. The hospital has lost contact with this patient who may not be receiving follow-up medical treatment.
- *APIAVOTE MI. Located in Detroit, MI. We spoke with Aamina Ahmed, Executive Director:* The organization has heard from Bangladeshi leaders who are concerned that their community members did not want to enroll in health insurance under the Affordable Care Act out of fear that it could cause them or their families to be determined public charges. They also received a request for assistance from a woman who wanted to withdraw

¹¹⁹ Baker, Laurence and Linda Schuurman Baker, "Excess Cost of Emergency Department Visits for Nonurgent Care," Health Affairs. (1994). Available at:

<https://www.healthaffairs.org/doi/full/10.1377/hlthaff.13.5.162>

¹²⁰ Teague, Courtney, "Napa families consider sacrificing health care to stay in America," Napa Valley Register. (November 25, 2018). Available at:

https://napavalleyregister.com/news/local/napa-families-consider-sacrificing-health-care-to-stay-in-america/article_3821c658-8410-58c2-97e8-56005532ea35.html

her child from preschool and was afraid about how her child's school records might be used for immigration purposes.

- *Korean Community Services (KCS). Located in New York and New Jersey. We spoke with Grace Kim, Assistant Director. The organization counted at least 17 times Korean language media, which many of their clients get their news from, covered the potential for the administration to add new public charge restrictions prior to the rule's official release. These articles covered how green card applications may be rejected for benefits use, how families may find it difficult to use the family visa system as a result and how community members have fear of applying for immigration and public benefits. KCS has had to work to educate the media as part of their efforts to ensure their community members understand the proposal. Education has been hard given the complexity of the proposed rule. In addition, they have experienced a drop in clients wishing to apply for health insurance under the ACA and other clients have been afraid of accessing services related to Hepatitis B, vaccinations and women's health because they fear doing so may impact their green card process.*
- *Asian Services in Action (ASIA). Based on Cleveland, Ohio. We spoke with Kimlee Sureemee, Manager of Policy- Advocacy and Development. Staff who work with clients to help them access public assistance have reported that community members do not want to apply for benefits out of fear for their immigration status. Staff who provide medical care report patients asking for their medical records to be deleted because they are afraid of the clinic being forced to turn their information over to immigration enforcement. Staff have had to spend time walking patients and clients through public charge. ASIA staff are also providing free legal services consultations for those fear they may be impacted by public charge.*
- *Boat People SOS Gulf Coast (BPSOS). Based in Biloxi, Mississippi. We spoke with Daniel Le. Staff are encountering many clients in the Vietnamese community with questions about whether their use of SNAP, CHIP or ACA health insurance could impact their citizenship applications. The organization is unsure how to best advise clients given the uncertainty and complexity surrounding the proposed rule, particularly those who are considering applying for health insurance under the ACA. Le said, "This public charge may have significant implications about how people will access public benefits. On the one hand [many members of the Vietnamese community] need these services. On the other hand, they're afraid these may have implications when they apply for citizenship. It's a very sensitive issue for them."*
- *SEAMAAC. Based in Philadelphia, Pennsylvania. We spoke with Donna Backues, Community and Family Wellness Coordinator. Agency staff have encountered clients refusing to apply for or accept benefits that they are legally eligible for, particularly SNAP, out of fear that using the benefit will*

impact their citizenship applications. They have found this is especially true among the Indonesian community. This trend has led to appointments taking longer than usual, as staff work through these issues with clients. In recent weeks, more and more clients have brought up public charge. Clients have also been expressing a fear of deportation.

- *Asian Pacific Community in Action. Located in Phoenix, Arizona. We spoke with Loyal Rabat, Empowerment and Advocacy Manager. Staff have noticed a “huge decrease” in SNAP applications, particularly among people who are due to renew. Clients are not coming back to update their applications. Staff have also been asked by an increasing number of clients about how to apply for citizenship and believe the increase is due to a fear by clients that waiting could mean they are later disqualified for naturalization.*
- *New Mexico Asian Family Services Center. Located in Albuquerque, New Mexico. We spoke with Zhibin Hong, Media Specialist. Staff are worried about the public charge proposal, given in part, that they have seen fewer applicants for public benefits in the third and fourth quarter of 2018. In particular, staff are concerned about the proposed rule’s impact on the international student community that they serve, who are eligible for Medicaid if they become pregnant. Said Hong, “For a very long time NMAFC and its case managers have been telling the community that Medicaid is open to any pregnant individual in NM; and after this public charge thing, all case managers feel hesitant to tell public the information about benefits in the future.”*

The above responses demonstrate the deeply harmful impact that this proposed rule will have on CBOs and their clients. Even before it is finalized, their communities have been filled with fear and uncertainty and are already taking actions that may jeopardize their health. These organizations, which operate with very limited budgets and staff, have had to devote resources to helping clients understand the proposal and its potential impact on their lives. Should this rule be finalized, they will have to spend significantly more resources, likely requiring a permanent shift in some of their operations. This will cost money and staff time. If clients refuse to come in out of fear that seeking aid could jeopardize their ability to stay in the country, it could even lead to CBOs losing financial resources. And it is important to note that these are largely mission driven organizations. Staff care about their clients. If clients are facing stress or neglecting their health, the staff of our partner organizations will suffer as well. Therefore, DHS must withdraw this rule.

VI. The Proposed Rule would Harm Lower and Middle Class AAPI Families.

As proposed, the only heavily weighted positive factor an immigration office could use in a public charge determination would be if a family earned over 250 percent of the federal poverty threshold. A household of four, with two working parents and two children, would have to earn \$62,750 a year. If both parents worked 40 hours a week, for 52 weeks a year, they would have to earn a combined \$30 an hour, or nearly four

times the federal minimum wage. If the same family has a third child or takes in a family member in need, they would need to earn \$73,550 to increase their chances of avoiding a public charge determination. In this way, the proposal harms families who have children in their household and those who are caring for aging parents and grandparents. About 26 percent of AAs live in multigenerational households, a higher share than the U.S. overall (19 percent).¹²¹ Some groups, have even higher rates, including Bhutanese (53 percent), Cambodians (41 percent) and Laotians (38 percent). Such a standard is not only anti-family, but it would make it difficult for businesses to retain or hire immigrants here on a visa that might hope to apply for LPR status in the future if that immigrant hopes to grow their family.

The proposal would disproportionately harm certain AA subgroups who are at risk of poverty, such as Marshallese (41 percent poverty rate), Burmese (38 percent), Hmong (26.1 percent) and Tongans (22.1 percent). These groups would be particularly likely to be being forced to choose between access to health and nutrition and their ability to keep their family united.¹²² They would struggle more than others to achieve that 250 percent of poverty threshold. Such data is evidence that this rule would discriminate against immigrants from certain ethnic and national origin backgrounds.

a. The Use of Credit Scores Will Hurt AAPI Families

The Department proposes to use poor or low credit scores as a negatively weighted benefit. A credit score is a very poor measurement for a person's potential contribution to society.¹²³ APIAHF has direct experience in understanding why this is a deeply flawed proposal. In response to the Department's invitation for comments about this piece of the proposal at FR 51189, we wish to make it clear that this is yet another element of the proposed policy that demonstrates why the entire rule must be withdrawn.

APIAHF has partnered, during ACA open enrollment, with community based organizations to provide resources for assisting immigrant populations and relayed their concerns and problems to the Centers for Medicare and Medicaid Services. The ACA partly relies on credit systems, through Experian, to verify identities. In our experience, immigrants often encounter barriers in this system. We have had seen Experian either be unable to provide information about applicants or provide incorrect information that requires extensive time to correct. Relying on credit checks for public charge would likely have similar results, either providing useless or inaccurate information that could lead an immigrant to an incorrect public charge determination or otherwise require even more time of the applicant to resolve the inaccuracy.

¹²¹ Lopez, Gustavo, Neil Ruiz and Aileen Patten, "Key facts about Asian Americans, a diverse and growing population," Pew Research Center. (September 8, 2017). Available at: www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/

¹²² American Community Survey 2015 Five Year Estimates, table DP03.

¹²³ Traub, Amy, "Discredited, How Employment Credit Checks Keep Qualified Workers Out of A Job," Demos. Available at: <https://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>

Even if the immigration officer is able to pull the correct credit score, it is a poor tool for evaluating the likelihood of a person becoming a public charge. 45 million consumers in the United States in 2010 either had no credit record or were treated as unscorable by the rating agencies. Families having an income were more likely to have a credit score in the first place.¹²⁴ It makes little sense to utilize credit score as a tool to determine who is and is not allowed to enter or stay in the country.

The use of credit scores is particularly problematic in the context of the late-2008 recession and housing crisis, in which families were misled into buying homes with bad mortgage terms by predatory lenders and subsequently had their credit scores irreparably damaged.¹²⁵ Therefore, the use of credit scores is an additional reason why DHS must withdraw this proposal.

b. DHS's Measurement of Whether Someone Has Used a Public Benefit Is Poorly Considered

DHS asks, at FR 51165, for comments on the appropriateness of the 15 percent of the federal poverty level threshold that the agency proposes to consider as a standard for whether a person is self-sufficient. We believe this is an arbitrary and inappropriate measure that is not in line with any measure of how public benefits are used by families. The proposed rule states, "DHS believes that an individual who receives monetizable public benefits in excess of 15 percent of FPG is neither self-sufficient nor on the road to achieving self-sufficiency." Yet, the agency provides no evidence for why that standard is chosen and nor could it. There is no precedent and no federal agency or department has ever used it such a standard, making it both inappropriate and arbitrary.

Immigrants, and anyone receiving benefits, do not measure how much they receive, and certainly not by percent of federal poverty level, nor do the agencies that serve them or the policymakers that craft the benefits programs being considered. This definition of self-sufficiency has no basis in law or policy, and would lead to receiving the equivalent of \$5 a day in benefits being deemed *not* self-sufficient.

VII. The Proposed Rule Undermines Our Nation's Promise to Compact of Free Association (COFA) Communities

Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau play a vital role in our national positioning in the pacific region and supporting our national security. Under the Compact of Free Association treaties (COFA) signed by those nations and the U.S. COFA citizens may enter, live and work in the U.S. without a visa. These nations are also commonly known as the Freely Associated States (FAS). In exchange, the U.S. enjoys certain military privileges, including free access to

¹²⁴ "Data Point: Credit Invisibles," Consumer Financial Protection Bureau (May 7, 2015). Available at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

¹²⁵ "Wu, Chi Chi, "Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession," National Consumer Law Center. (December 2013). Available at www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

and unrestricted control of certain defense sites in the region. Due to challenging economic conditions in their home nations, many of those traveling from FAS Nations to the U.S. come in search of better employment, even though those opportunities often pay barely a living wage, such as those in the hospitality or poultry processing sectors.

Citizens of COFA nations living in the U.S. are eligible for some public assistance that would be subject to this proposal, such as Section 8 Vouchers, Public Housing and, in the case of pregnant women and children in some states, Medicaid and CHIP. Since the PRWORA of 1996, COFA citizens have been largely ineligible for most federal means tested public benefits, including Medicaid. APIAHF has worked with COFA leaders and community organizations as well as private stakeholders to raise awareness about this injustice and to restore Medicaid access to these communities who work and pay taxes like all other communities.¹²⁶

a. The Proposed Rule Could Deeply Affect COFA Citizens

We are deeply concerned that this rule would interfere with the ability of COFA citizens to freely travel to and live in the U.S. under the compact treaties. The proposed rule states that people entering the U.S., even those without a needing visa, may be stopped at ports of entry and required to show that they will not be a public charge. This means that a COFA citizen coming to the U.S., as is their privilege under the Compacts, could be stopped at the port of entry and forced to fill out the public charge form, potentially delaying them for hours or even denying them entry into the U.S. if they are not able to meet the proposed criteria.

We fear that many may not. We also fear that the arbitrary nature of how this rule might be carried out could lead to fear and confusion among the COFA community.

There are at least 61,000 citizens of COFA nations living in the U.S.¹²⁷ Since reports of the proposed rule, as well as its official release, APIAHF has conducted outreach to leaders in those communities to assess their knowledge of the proposed rule and public charge. We have found that, in general, citizens of COFA nations living in the U.S. have little knowledge about public charge. We believe this is largely because public charge determinations are largely not made under current practice to persons entering the U.S. who do not need a visa. In addition, we believe that the community is largely unaware of existing application of public charge because they are generally not eligible for the programs that, under the 1999 field guidance, could cause a person to be labeled as a public charge. In addition, income thresholds and other tests proposed in the rule are not currently in practice. Thus in practice, there are few situations in which a COFA

¹²⁶ "Health Care for COFA Migrants," Asian & Pacific Islander American Health Forum. (January 2016). Available at: <https://www.apiahf.org/resource/health-care-for-cofa-migrants/>

¹²⁷ Harris Joshua, Tanya, "Interior Assistant Secretary Discusses Health Care Coverage Options with Representatives from the Freely Associated States of Micronesia, Marshall Islands, and Palau Living in Hawaii and U.S. Mainland," U.S. Department of Interior. (November 11, 2016). <https://www.doi.gov/oia/interior-assistant-secretary-discusses-health-care-coverage-options-representatives-freely-0>

citizen could be determined a public charge under the current regulations, but under the proposed rule, there are numerous.

b. The Proposed Rule Would Undermine the Health and Well-being of COFA Citizens in the U.S.

The health of COFA citizens reflect many of the broader disparities faced by Pacific Islanders. For example, Marshallese adults living both in the Republic of the Marshall Islands and in the U.S. have among the highest rates of type 2 diabetes in the world, more than 3 times, if not more, than the general U.S. population.¹²⁸ Much of these elevated rates of diabetes are due to the introduction of a western diet combined with global trends that make it more difficult to access healthier foods. Because of U.S. nuclear testing in the Marshall Islands, some populations in COFA nations are still living with the effects of radiation and will for years to come.¹²⁹ Under this rule, those coming from COFA nations with health conditions could be denied entry because of their health status. Those living in the U.S. could be denied green cards, reentry or could be forced to avoid health care that could allow them to treat and improve chronic health issues, thereby interfering with their ability to work and be active members of their communities.

Some states, including Washington and Hawaii, have developed their own state run programs to provide health insurance for COFA citizens. While those programs would not be covered by the proposed rule, we fear that, particularly because they are run through the states' broader implementation of federal health programs, COFA citizens may avoid them as a result of the confusion and uncertainty caused by this rule. Such behavior would reflect the chilling effect discussed elsewhere in our comments.

Given the complexity of public charge and confusion about application to COFA citizens seeking to enter the U.S. or adjust their status, we believe that, if implemented, significant resources would be required by to educate citizens of COFA nations about public charge. Education efforts would require resources to be spent by community based organizations, state and local government agencies (particularly in states with large and growing COFA populations like Hawaii, California, Washington, Oregon, Arkansas and Oklahoma) and the diplomatic outposts of FAS nations. Nine states have COFA citizen populations exceeding 1,000 people.¹³⁰

¹²⁸ Ichiho, Henry, et al, "An Assessment of Non-Communicable Diseases, Diabetes, and Related Risk Factors in the Republic of the Marshall Islands, Kwajelein Atoll, Ebeye Island: A Systems Perspective," *Hawaii J Med Public Health*. 72(5 suppl 1):77–86. (2013). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3689463/>

¹²⁹ Pollock, NH, "Health transitions, fast and nasty: the case of Marshallese exposure to nuclear radiation," *Pac Health Dialog*, 9(2):275-83. (September 2002).

¹³⁰ Harris Joshua, Tanya, "Interior Assistant Secretary Discusses Health Care Coverage Options with Representatives from the Freely Associated States of Micronesia, Marshall Islands, and Palau Living in Hawaii and U.S. Mainland," U.S. Department of Interior. (November 11, 2016). <https://www.doi.gov/oia/interior-assistant-secretary-discusses-health-care-coverage-options-representatives-freely-0>

As such, we urge DHS to withdraw this rule because of the harm it would cause for COFA citizens, their communities and the governments and nonprofits that provide assistance to them, as well as undermining our treaty obligations and positioning with COFA nations.

VIII. The Proposed Rule Would Hurt Children

We are particularly concerned about the disastrous consequences this will have on children, including both noncitizens and U.S. citizens. The harm brought by this rule on their health and well-being will be felt across their life-span, yet DHS does not even attempt to measure the long term consequences of public charge on children and families.

The most direct harm to children is that the proposal would negatively weight applicants for admission under the age of 18, discriminating against children and youth. If denied entry into the country as public charges, they could be prevented from joining or remaining with their parents in the U.S. In addition, the Migration Policy Institute found that 45 percent of children who recently received green cards had two or more negative factors.¹³¹ Depriving children of programs that could increase their families' ability to thrive will lead to deep stress, which studies shown then in turn leads to reduced outcomes throughout life.¹³² Children are our future and potential use of public benefits during their youth may make them more likely to succeed, as we shall discuss.

a. The Rule Would Impact Children, Including Hundreds of Thousands of AAPIs

Children of immigrants, at least 90 percent of whom are U.S. citizens, account for 31 percent of all children who live in households that receive Medicaid, SNAP, SSI or TANF. This means that a significant portion of children on all U.S. benefits receiving households could be impacted by this rule.¹³³ 18 percent of AAs between the ages of 5 and 17 were not born in the U.S.¹³⁴

Organizations have been long working with federal agencies to address access to health care and health insurance for children, including APIAHF. Many children with immigrant parents remain uninsured because of barriers in the eligibility and policy systems. APIAHF works to narrow or end disparities such as these. This rule, however, will likely

¹³¹ Capps, Randy et al, "Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration," Migration Policy Institute. (November 2018). Available at:

<https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration>

¹³² Evans, Gary, Jeanne Brooks-Gunn and Pamela Kato Klebavnov, "Stressing Out the Poor, Chronic Physiological Stress and the Income-Achievement Gap," Pathways. (2011). Available at: https://inequality.stanford.edu/sites/default/files/PathwaysWinter11_Evans.pdf

¹³³ Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, Migration Policy Institute. (2018). Available at: <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>

¹³⁴ APIAHF Analysis of 2015 American Community Survey 5 year data

will lead to the reversal of our work and continuing on the concerning trend of the children's uninsured rate rising for the first time in a decade.¹³⁵

b. The Rule Would Lead to More Uninsured Children

According to the Kaiser Family Foundation, in 2016, there were 10.4 million citizen children with at least one noncitizen parent. 56% of those children, had Medicaid or CHIP coverage in that year.¹³⁶ While this rule would not directly require children with parents seeking a green card to disenroll from public benefits, the previously referenced chilling effects would mean many of those children would likely lose coverage regardless.

As discussed earlier in our comments, this rule would particularly impact children in states that have adopted the ICHIA option for children and pregnant women. For children, the impact is obvious, they (or their parents on their behalf) would be forced to choose between health insurance and a future with their family in this country. For a pregnant women, lack of health insurance may have severe consequences for both maternal and fetal health.

Researchers have well documented that the health and access to health insurance of parents has an important impact on their children's health and access to coverage. After the passage of PRWORA, the uninsured rate of children born to foreign-born single mothers with low education increased by 13.5 percentage points.¹³⁷ A parent's enrollment in Medicaid is also linked with their children's likelihood of attending wellness visits.¹³⁸ Because many parents may disenroll, or not pursue, health insurance as a result of this rule, it is highly likely that they will also disenroll or not seek out health insurance for their children.

Children with special needs may be particularly impacted. 4.8 million children with particular medical needs, such as a disability or recent medical diagnoses, live in households with at least one noncitizen adult and were insured by Medicaid or CHIP. The California Health Care Foundation estimated 700,00 to 1.7 million of those children

¹³⁵ Alker, Joan and Olivia Pham, "Nation's Progress on Children's Health Coverage Reverses Course," Georgetown Center for Children and Families. (November 2018). Available at: https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018_Final_asof1128743pm.pdf

¹³⁶ Artiga, Samantha, Anthony Damico and Rachel Garfield, "Potential Effects of Public Charge Changes on Health Coverage for Citizen Children," Kaiser Family Foundation. (May 18, 2018). Available at: https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-issue-brief/#endnote_link_257512-5

¹³⁷ Neeraj Kaushal and Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," Health Services Research 40, no. 3 (June 2005): 697–722. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>

¹³⁸ Venkataramani, Maya, Craig Evans Pollack, and Eric T. Roberts, "Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services," American Academy of Pediatrics. (November 2017). Available at: <http://pediatrics.aappublications.org/content/140/6/e20170953>

could disenroll if this proposal is finalized.¹³⁹ This includes up to 333,000 children with a life threatening condition and up to 238,000 newborns.

c. Children's Access to Health Insurance is Vital to their Health

According to the Kaiser Family Foundation, "A large and consistent body of evidence shows that, following enrollment in Medicaid or CHIP, children are more likely to have a usual source of care, visits to physicians and dentists, and use of preventive care, and less likely to have unmet needs for physician services, prescription drugs, and dental, specialty, and hospital care"¹⁴⁰

Access to SNAP and Medicaid have been found to improve immigrant children and children of immigrants' health and performance:

- They are more likely to be able to afford medical care and prescription medicine.¹⁴¹
- The longer they are on the program, the likelier they are to gain significant health benefits later in life.¹⁴² This contrasts with the temporal focus of the negatively weighted factors in this proposed rule around length of enrollment.
- They are more likely to have a usual source of care, regularly receiving checkups, while less likely to have unmet health care needs.¹⁴³

More broadly, studies have demonstrated the lifelong gains that children on public assistance experience:

- Children on Medicaid have fewer school absences, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults.¹⁴⁴

¹³⁹ "Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care," California Health Care Foundation. (October 2018). Available at: <https://www.chcf.org/wp-content/uploads/2018/10/ChangingPublicChargeImmigrationRules.pdf>

¹⁴⁰ "The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?," Kaiser Family Foundation (July 2014). Available at: <https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/>

¹⁴¹ "Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive," Children's Health Watch. (2018). Available at: <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf>

¹⁴² East, Chloe, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," (2017). Available at: http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf

¹⁴³ Percheski, Christine and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21. (2017).

¹⁴⁴ Karina Wagnerman, Alisa Chester, and Joan Alker, Medicaid is a Smart Investment in Children, Georgetown University Center for Children and Families, March 2017, <https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/>

- Children in families receiving housing assistance are more likely to have a healthy weight and score higher on other measures of wellbeing.¹⁴⁵
- SNAP improves food security, dietary intake, and health, especially among children, and with lasting effects.¹⁴⁶
- As compared to children without health insurance, children enrolled in Medicaid in their early years have better health, educational, and employment outcomes not only in childhood but as adults.¹⁴⁷

Including nutritional assistance and housing programs will also hurt children. Households with children enrolled in SNAP are significantly less likely to experience food insecurity.¹⁴⁸ As we discussed, health and housing are connected. The impact of being homeless compounds by duration for children, harming their growth and development. This is true even for children who were only homeless in utero.¹⁴⁹

d. Child Health is Connected to Maternal Health

In addition to the impact on children who are enrolled in health insurance after birth, the rule could impact their health even before birth. A child's life and health are influenced by the health of it's mother as well as other social determinants of health. Indeed, this is why public health has focused so significantly on improving access to prenatal care for all women and particularly those with vulnerable characteristics. Access to care for pregnant women is already insufficient. 40 percent of mothers surveyed across 30 states reported that they delayed prenatal care because they lacked the money or insurance to pay for their care.¹⁵⁰ 27 percent of immigrant women of reproductive age are uninsured.¹⁵¹ Throughout their lives, immigrant women, including

¹⁴⁵ Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf

¹⁴⁶ Hartline-Grafton, H. (2013). *SNAP and Public Health: The Role of the Supplemental Nutrition Assistance Program in Improving the Health and Well-Being of Americans*. Food Research & Action Center.

¹⁴⁷ Rourke O'Brien and Cassandra Robertson, *Medicaid and Intergenerational Economic Mobility*, University of Wisconsin—Madison, Institute for Research on Poverty, 2015, <https://search.library.wisc.edu/catalog/9910223409002121>; Andrew Goodman-Bacon, *The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes*, NBER Working Paper No. 22899, 2016, www.nber.org/papers/w22899

¹⁴⁸ Mabi, James and Julia Worthington. "Supplemental Nutrition Assistance Program Participation and Child Food Security " *Journal of Pediatrics*. (2014). Available at: <http://pediatrics.aappublications.org/content/133/4/610>

¹⁴⁹ Sangel, Megan, Richard Sheward and Lisa Sturtevant, "Compounding Stress The Timing and Duration Effects of Homelessness on Children's Health," *Insights from Housing Policy Research*. (June 2015). Available at: media.wix.com/ugd/19cfbe_07b13c8e56a14337a316e2e991aa0bf7.pdf

¹⁵⁰ "Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage," The Kaiser Family Foundation. (Feb. 13, 2018). Available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

¹⁵¹ "Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage," The Kaiser Family Foundation. (Feb. 13, 2018). Available at:

AAPI immigrant women, generally are at higher risk of economic insecurity than men because of pay disparities¹⁵² and other forms of discrimination,¹⁵³ overrepresentation in low-wage work,¹⁵⁴ and disproportionate responsibility for caregiving,¹⁵⁵ among other factors. This heightened risk for economic insecurity means that immigrant women's

<https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

¹⁵² Women on average earn less than men, with even greater wage gaps for women of color, LGBTQ women, older women, and women with disabilities. See Nat'l Women's Law Ctr., *Frequently Asked Questions About the Wage Gap* (2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/Wage-Gap-FAQ.pdf>; Nat'l Women's Law Ctr., *The Wage Gap: The Who, Why, How, and What to Do* (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/09/The-Wage-Gap-The-Who-How-Why-and-What-to-Do-2017-2.pdf>. Immigrant women likewise face a significant wage gap compared to native-born and naturalized men: foreign-born, noncitizen women, on average, earned 58 cents for every dollar earned by native-born men in 2015. Elise Gould, Jessica Schieder & Kathleen Geier, Econ. Pol. Inst., *What is the Gender Pay Gap and Is It Real?* (2015), <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

¹⁵³ Discrimination and harassment based on gender, race, sexual orientation, age and disability (or a combination of these) and domestic violence also impose economic costs on women, including by disrupting and jeopardizing their employment. See, e.g., Nat'l Women's Law Ctr., *Sexual Harassment in the Workplace* (2016), <https://nwlc.org/wp-content/uploads/2016/11/Sexual-Harassment-Fact-Sheet.pdf>; Institute for Women's Policy Research, *The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking* (2017), <https://iwpr.org/wp-content/uploads/2017/08/B367-Economic-Impacts-of-IPV-08.14.17.pdf>. Immigrant women are particularly vulnerable to abuse from employers, including discrimination and harassment, because of lack of awareness of workplace rights and fear of retaliation such as termination or being reported to immigration authorities for deportation. See, e.g., Maya Raghu, Nat'l Women's Law Center, *Standing with Immigrant Women Workers on May Day* (2017), <https://nwlc.org/blog/standing-with-immigrant-women-workers-on-may-day/>.

¹⁵⁴ Women make up two-thirds of the low-wage workforce (defined for the purposes of this discussion as jobs that pay, on average, \$11.50 per hour or less). Kayla Patrick, Meika Berlan & Morgan Harwood, Nat'l Women's Law Ctr., *Low-Wage Jobs Held Primarily by Women Will Grow the Most Over the Next Decade* (2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade-2018.pdf>. Immigrant women are overrepresented in low-wage jobs (such as maid or housekeeper, nursing, psychiatric, or home health aide, or cashier), as are women of color. American Immigration Council, *The Impact of Immigrant Women on America's Labor Force* (2017), <https://www.americanimmigrationcouncil.org/research/impact-immigrant-women-americas-labor-force>; National Women's Law Center, *Underpaid & Overloaded: Women in Low-wage Jobs* (2014), https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf. Because many of these jobs, in addition to paying unjustly low wages, are unstable and offer few benefits, many women in the low-wage workforce are unable to support their families on their wages alone. See, e.g., Julie Vogtman & Karen Schulman, Nat'l Women's Law Ctr., *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success* (2016), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents'-and-Children's-Success.pdf>.

¹⁵⁵ Women are more likely than men to raise children on their own, see, e.g., U.S. Census Bureau, *America's Families and Living Arrangements 2018*, Tbl. A3, <https://www.census.gov/data/tables/2018/demo/families/cps-2018.html>, meaning that their incomes must stretch to support more family members.

ability to continue to participate in the programs targeted by the proposed rule is vitally important.

Access to health insurance also leads to lower birth mortality rates.¹⁵⁶ And when women forgo medical care, including preventive reproductive health care, easily treatable illnesses or medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and even disability or death.¹⁵⁷

More specifically, this proposed rule may discourage women from obtaining prenatal care, which has ramifications not only for their health and their pregnancies, but also for birth outcomes.¹⁵⁸ For example, women who received SNAP during pregnancy gave birth to fewer babies with low birth weight.¹⁵⁹ Lack of adequate health care, including prenatal care, contributes to higher rates of maternal mortality, higher rates of infant mortality, and increased risk of low-infant birth weight.¹⁶⁰

In addition, the proposal further discriminates against immigrants who are not working but instead caring for children by threatening a parent's immigration status on their ability to care for their child.

¹⁵⁶ Steffie Woolhandler & David U. Himmelstein, "The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly," *Annals of Internal Medicine*. (2017). Available at: <http://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly>.

¹⁵⁷ Steffie Woolhandler & David U. Himmelstein, *Annals of Internal Medicine*, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly* (2017), <http://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly>; Rachel West, Center for American Progress, *Expanding Medicaid in All States Would Save 14,000 Lives Per Year* (2018); Committee on the Consequences, Board on Health Services, Institute of Medicine, *Care Without Coverage: Too Little, Too Late* (2002); Adam Sonfield, Guttmacher Policy Review, *Beyond Contraception: The Overlooked Reproductive Health Benefits of Health Reform's Preventive Services Requirement*, (2012) <https://www.guttmacher.org/gpr/2012/10/beyond-contraception-overlooked-reproductive-health-benefits-health-reforms-preventive>.

¹⁵⁸ Megan M. Shellinger, et al., *Maternal and Child Health Journal*, *Improved Outcomes for Hispanic Women with Gestational Diabetes Using the Centering Pregnancy Group Prenatal Care Model* (2016), <https://link.springer.com/article/10.1007/s10995-016-2114-x>.

¹⁵⁹ Almond, Dougal, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2). (May, 2011). Available at: https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089;

¹⁶⁰ Jacques Balayla & Haim Arie Abenheim, *American Journal of Perinatology*, *Inadequate Prenatal Care Utilization and Risks of Infant Mortality and Poor Birth Outcome: A Retrospective Analysis of 28,729,765 U.S. Deliveries over 8 Years* (2012), https://www.researchgate.net/profile/Jacques_Balayla2/publication/230573498_Inadequate_Prenatal_Care_Utilization_and_Risks_of_Infant_Mortality_and_Poor_Birth_Outcome_A_Retrospective_Analysis_of_28729765_US_Deliveries_over_8_Years/links/0deec526dabeb49c3f000000/Inadequate-Prenatal-Care-Utilization-and-Risks-of-Infant-Mortality-and-Poor-Birth-Outcome-A-Retrospective-Analysis-of-28-729-765-US-Deliveries-over-8-Years.pdf.

e. The Proposed Rule Would Hurt Children's Education

This proposal would also impact education outcomes, which are deeply tied to both health and lifetime achievement. One study of educators on the impact of enhanced immigration enforcement actions found that 90 percent reported observing emotional and behavioral problems among immigrant students and two-thirds said concern for their classmates impacted their learning.¹⁶¹ Increased immigration enforcement has also led to drops in enrollment among early childhood education programs, as well as decreased parent enrollment.¹⁶² APIAHF believes that all children should have access to a good education and that the value of a child feeling safe in school, including feeling safe using school health services, should never be a question. If children do not attend school or are not able to fully participate, not only will those children and their families be harmed, but so will children who attend school with them and their broader communities. In the long term, such harm will damage the entire nation's economy.

The proposed rule may create a chilling effect in application for financial aid in education setting, such as students applying for post-secondary education. Not only would fewer college educated people hurt our economy, research has found that a college degree improves health status.¹⁶³ It may also hurt the ability of potentially impacted immigrants to thrive when they enter college. If they avoid health centers or other aid that could help them be in good physical and mental health for academic success, immigrants scared by the proposed rule may have their academic performance suffer. At least one college student support staffer reports that, due to the proposed rule, "people have already approached their office, afraid to receive assistance from government programs, even if doing so would not endanger their current or future immigration status."¹⁶⁴

f. The Rule Will Increase Childhood Poverty

The health benefits of SNAP and Medicaid, which can stretch across a lifetime, are important measures for addressing poverty and economic mobility.¹⁶⁵ In fact, the ability

¹⁶¹ Gándara, Patricia and Jongyeon (Joy) Ee, "U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," The UCLA Civil Rights Project. (February 28, 2018). Available at: <https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools>

¹⁶² Hannah Matthews et al, "Immigration Policy's Harmful Impacts on Early Care and Education," The Center for Law and Social Policy (March 2018). Available at: https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf

¹⁶³ "Higher Education and Income Levels: Keys to Better Health", Centers for Disease Control: National Center for Health Statistics, Office of Communications, (May 16, 2012). Available at: https://www.cdc.gov/media/releases/2012/p0516_higher_education.html

¹⁶⁴ Welshans, Olivia, "Students submit comments to oppose changes to "public charge" rule." The Daily Illini. (November 30, 2018). Available at: <https://dailyillini.com/news/2018/11/30/students-submit-comments-to-oppose-changes-to-public-charge-rule/>

¹⁶⁵ Page, Marianne, "Safety Net Programs Have Long-Term Benefits for Children in Poor Households", University of California, Davis. (2017). Available at:

for families to use these programs may actually increase their ability to avoid the cash assistance programs that currently count against a public charge determination. This rule therefore, could have the opposite effect of what it purports to propose, by making immigrants less self-sufficient. This is why government policy has long viewed cash welfare benefits as fundamentally different than assistance for specific life-sustaining purposes, such as health and nutrition. While cash benefits can also help sustain a family through a rough patch, DHS fails to acknowledge how this proposed rule could increase poverty by depriving children and their parents of the tools that could allow them to thrive.

If households with at least one immigrant householder did not take up SNAP or WIC, the number of children in poverty would increase by an estimated 560,000.¹⁶⁶ In 2006, 31 percent of children enrolled in WIC were citizen children of immigrant parents or immigrant children.¹⁶⁷ In 2009 eight percent of all SNAP participants and 17 percent of child participants were citizen children living with noncitizen adults.¹⁶⁸ Data aside, APIAHF partners have passed on many stories, which reflect those in the media, of now very successful adults who were on food stamps or Medicaid or other benefits as a children and attribute their ability to succeed to the stability provided by those supports.

g. The Impact on Children Demonstrates the Entire Rule Must Be Withdrawn

The harm on children in this rule is dramatic will be widespread no matter how the rule is implemented.

DHS asks, at FR 51174, about the “best mechanism to administer public charge inadmissibility determinations for those aliens who receive benefits while under the age of majority.” We believe that all immigrant children play a critical role in the future of our country, regardless of their origin or past or current receipt of benefits. As documented in these comments, use of benefit health insurance and other benefits actually increase the ability of children to grow into adults that contribute to their communities and the economy.

https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf

¹⁶⁶ Jennifer Laird et al., “Foregoing Food Assistance Out of Far Changes to ‘Public Charge’ Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty,” Columbia Population Research Center. (April 5, 2018). Available at:

https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Poverty+and+Social+Policy+Brief_2_2.pdf

¹⁶⁷ Vericker, Tracy et al., “Effects of Immigration on WIC and NSLP Caseloads,” Urban Institute. (September 2010). Available at

<https://www.urban.org/sites/default/files/publication/29156/412214-Effects-of-Immigration-on-WIC-and-NSLP-Caseloads.PDF>

¹⁶⁸ Skinner, Curtis, “SNAP Take Up Among Immigrant Families With Children”, Columbia University National Center for Children in Poverty. (March 2011). Available at http://www.nccp.org/publications/pdf/text_1002.pdf.

DHS, at FR 51174, also specifically asks whether the Children’s Health Insurance Program should be included in the public charge determination. We oppose the addition of all new programs to the public charge program, including CHIP. The harmful outcomes we describe above on children and families would be multiplied.

Finally, DHS itself acknowledges that, if implemented, this proposal, “has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.” Targeting children hurts our country’s long term economic future. This proposed rule must be withdrawn immediately.

IX. The Proposed Rule Would Undermine Women’s Health and Economic Security, Thereby Threatening the Family Unit

The proposed rule’s unprecedented consideration of Medicaid as part of the public charge determination poses a dire threat to the health of immigrant women. Medicaid is a critically important program for women, meeting most of women’s health needs throughout their lives.¹⁶⁹ Yet, under this proposed rule, immigrant women who are eligible for Medicaid,¹⁷⁰ and to whom the proposed rule would apply,¹⁷¹ face having their use of Medicaid counted against them. This puts them in the untenable situation of having to decide between critical health coverage that keeps them healthy and being able to become a lawful permanent resident.

Women who have health coverage are more likely to receive preventive care, such as breast cancer and cervical cancer screenings.¹⁷² Moreover, even though this proposed rule would not punish those who seek health care services that are unconnected to Medicaid – such as free or subsidized care at health centers – some immigrant women may avoid that care for fear of risking their future status. And when women forgo medical care, including preventive reproductive health care, easily treatable illnesses or

¹⁶⁹ Although Medicaid covers a range of services women need, it is important to note that federal law restricts federal Medicaid coverage of abortion except if the pregnancy is the result of rape or incest, or if the woman’s life is in danger. See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 202, 129 Stat. 2242, 2311 (2015).

¹⁷⁰ With certain, limited exceptions, immigrants are barred from obtaining Medicaid for five years after they obtain “qualified” status. This means, for example, that an immigrant must wait five years after becoming a lawful permanent resident before they are eligible to receive Medicaid benefits.

¹⁷¹ Immigrants for whom the proposed rule would apply, and who are also eligible for Medicaid, include people who have been granted withholding of deportation, such as those eligible for DACA. Also included are people with protected statuses, such as asylees, who then decide to apply for a lawful permanent resident status through a quicker option, such as becoming engaged to a U.S. citizen.

¹⁷² Munira Z. Gunja et al., “Women Gain Insurance and Improved Their Ability to Get Health Care,” The Commonwealth Fund. (2017). Available at: <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/how-affordable-care-act-has-helped-women-gain-insurance-and>.

medical conditions can escalate, leading to worsening of existing conditions, lengthening of illness, and even disability or death.¹⁷³

The proposed rule may also discourage women from seeking postpartum care, which is crucial to the health and well-being of mothers, newborns, and families.¹⁷⁴ Forgoing postpartum care could mean that women endure postpartum depression without proper medical, social, and psychological care, skip doctor's visits that address infant feeding, nutrition, physical activity and family planning, or leave other postpartum health issues unaddressed.

The proposed rule ignores the positive impact of public benefits in facilitating economic self-sufficiency. There is a large body of research demonstrating positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid. In particular, the use of these benefits often enables workers (especially those in the low-wage workforce) to remain employed.¹⁷⁵ This is because it is difficult, if not impossible, for women working in such jobs to support themselves and their families on their wages alone. Discouraging the receipt of these benefits would be especially problematic for working women whose employment may already be destabilized by discrimination, harassment, domestic violence, or caregiving responsibilities – in other words, for women with low incomes, women of color, and LGBTQ women.

X. The Proposed Rule Requires Immigrants to Provide Information About Program Use. That is Unreasonable and Creates an Administrative Burden.

DHS proposes to require all populations subject to public charge to fill out Form I-944, Declaration of Self-Sufficiency. The existence of this form and the information, and

¹⁷³ Steffie Woolhandler & David U. Himmelstein, *Annals of Internal Medicine*, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly* (2017), <http://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly>; Rachel West, Center for American Progress, *Expanding Medicaid in All States Would Save 14,000 Lives Per Year* (2018); Committee on the Consequences, Board on Health Services, Institute of Medicine, *Care Without Coverage: Too Little, Too Late* (2002); Adam Sonfield, Guttmacher Policy Review, *Beyond Contraception: The Overlooked Reproductive Health Benefits of Health Reform's Preventive Services Requirement*, (2012) <https://www.guttmacher.org/gpr/2012/10/beyond-contraception-overlooked-reproductive-health-benefits-health-reforms-preventive>.

¹⁷⁴ The American College of Obstetricians and Gynecologists, *Ob-Gyns Stress the Importance of Postpartum Care: The Fourth Trimester* (2016), <https://www.acog.org/About-ACOG/News-Room/News-Releases/2016/Ob-Gyns-Stress-the-Importance-of-Postpartum-Care-The-Fourth-Trimester?IsMobileSet=false>.

¹⁷⁵ See, e.g., Matthew Desmond & Carl Gershenson, *Social Problems, Housing and Employment Insecurity among the Working Poor* (2016), <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; Nat'l Women's Law Ctr., *Medicaid Is Vital for Women's Jobs in Every Community* (2017), <https://nwlc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/>; Ctr. on Budget & Pol'y Priorities, *Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion* (2018), <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid>.

burden on families who may be required to fill it out, including gathering the necessary materials to do so, demonstrates why DHS must immediately withdraw this rule.

The proposed rule would heavily weight use of public benefits, meaning that DHS must find out whether or not the applicant has used those benefits. There is not a method for DHS to reliably determine this information without burdening applicants in an unreasonable way or violating federal privacy laws. DHS has chosen, in the draft Form I-944, to require applicants to list all programs, asking applicants, "Have you ever applied for or received any of the public benefits as listed on the Instructions?" In the instructions for the form, at 3A, the form states "Medicaid," for example, in the list of benefits.

a. The Proposed Rule Has Unreasonable Expectations for Applicants for Immigrant Status

In our experience, many people are unable to identify that they are on Medicaid or CHIP or other programs. People who use benefits, especially immigrants, do not and should not spend time considering the exact name and nature of where their health insurance comes from. In fact, in many states, the programs are not called Medicaid at all, but some other name. This is similarly true for CHIP. What is important for these families is that they have health insurance they can rely on, not what it's called.

38 states have an alternative name for their Medicaid program.¹⁷⁶ An individual on such a program may be much more familiar with this alternative name than with the term "Medicaid" and therefore might not be able to correctly identify whether they are receiving Medicaid. This could cause them to inadvertently incorrectly fill out Form I-944. Research has demonstrated that this is true on federal surveys like the American Community Survey where a portion of respondents, who are enrolled in Medicaid, will indicate they are enrolled in some other type of coverage.¹⁷⁷

DHS, in the proposed rule, makes it clear that use of Emergency Medicaid is not considered a factor in the public charge determination. Yet, an immigrant may not know whether or not the Medicaid services they received are under that category. In some states, Emergency Medicaid recipients receive cards similar to those who receive full Medicaid.¹⁷⁸ This and the above facts creates an unreasonable burden for an immigrant

¹⁷⁶ "Medicaid By State: Alternative Names and Contact Information," American Council on Aging. (October 11, 2017). Available at: <https://www.medicaidplanningassistance.org/state-medicaid-resources>

¹⁷⁷ See for example: Call, Kathleen, et al "Medicaid Undercount and Bias to Estimates of Uninsurance: New Estimates and Existing Evidence," Health Services Research 43(3): 901-914. (2008); Call, Kathleen et al, "Comparing Errors in Medicaid Reporting across Surveys: Evidence to Date," Health Serv Res; 48(2 Pt 1): 652-664. (April 2013).

¹⁷⁸ For example, Illinois states that, "the message on the MediPlan Card (except for ESRD cases) now reads: 'Only emergency services are covered. Organ transplants and related services are not covered.'" Someone who is new to the U.S. medical system or is limited English proficient, while likely understanding the limits of their Medicaid, may not understand the significance of that message in terms of what type of Medicaid they received. Emergency Medical Coverage for

to perform the services of an eligibility worker or other expert in public assistance programs, to determine what kind of assistance they have received. DHS dramatically underestimates the time that this could take.

This problem is also true for SNAP, where 21 states call their program something other than SNAP and every state has a separate name for the card that SNAP benefits are loaded onto, which recipients may associate with the program, rather than with its official name.¹⁷⁹

In addition to the burden, we are concerned that immigrants risk inaccurately filling out forms due to no fault of their own because they did not see the day-to-day name of the program they are enrolled in listed. While immigrants, and any legal advisors they may have, should take these forms seriously, DHS does not account for the harm to families caused because of forms inadvertently incorrectly filled out. The inclusion of these additional, complex public benefit programs in the public charge determination, used by so many, means that such outcomes will be inevitable no matter how the form or regulation was designed.

b. Our Immigration System is Complex Enough

Much like applicants for immigration status, immigration officers are not trained to be experts in benefits programs. If an immigrant applicant is over inclusive, adding programs to the form out of caution, how will an officer know not to count those benefits? State eligibility workers can take months to be trained in the rules for who is and is not eligible for public assistance. It is not reasonable for DHS to expect its staff to become experts at a similar level.

The burden is exacerbated by the addition of further complexity in an already complex immigration system. There are over 70 USCIS forms for example, not to mention numerous others from the Department of State.¹⁸⁰

c. The Inclusion of Additional Benefits in the Proposed Rule Also Burdens State and Local Agencies

The Department recognizes that “as a result of a future final rule, some benefit-granting agencies may decide to modify enrollment processes and program documentation for designated benefits programs.” This implies, but drastically understates, the burden on local and state benefits agencies who will be responsible for dealing with the

Noncitizens, (March 21, 2003). Available at:

http://www.dhs.state.il.us/page.aspx?item=19608#a_toc6

¹⁷⁹ “Supplemental Nutrition Assistance Programs (SNAP) by State,” Universal Service Administrative Co. Available at: <https://www.usac.org/res/documents/li/pdf/samples/SNAP-Programs-by-State.pdf>

¹⁸⁰ Wasem, Ruth Ellen, "Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends," Congressional Research Service. (March 10, 2010). Available at: https://www.researchgate.net/publication/42606761_Immigration_Visa_Issuances_and_Grounds_for_Exclusion_Policy_and_Trends

consequences of this rule and adjusting their programs and systems to try and achieve the purposes they were created for.

In this context, at FR 51174, the department asks whether the rule should be delayed to allow for these adjustments. The fact that the Department can envision these adjustments means that the rule must be withdrawn. However, if it is not withdrawn, it must be delayed indefinitely to allow impacted agencies to adjust, and potentially for jurisdictions to pass new laws or regulations of their own in response, as some individual agencies may be limited in their ability to take action on their own.

Similarly, the Department notes that “that the proposed exclusion of certain benefits received before the effective date may provide an opportunity for public benefit granting agencies to communicate the consequences of receiving public benefits, to the extent such agencies deem appropriate.” It appears likely that most agencies would do this, yet DHS does not take into account the time and cost needed for agencies to adjust their manuals. To date, many state and local governments have already prepared information for clients on public charge because of the proposed rule.¹⁸¹ Others have previously issued letters clarifying immigrant eligibility and public charge.¹⁸² If finalized, many of the thousands of public assistance agencies in this country, at the state and local levels, will need to issue similar information.

Many public assistance agencies have public benefits policy manuals oriented more towards human service workers and aid organizations that clarify when an immigrant would be determined a public charge.¹⁸³ Considering the complex scheme in the proposed rule, updating these manuals would likely require extensive staff hours. DHS does not estimate the burden posed by this rule in updating these manuals.

DHS also fails to account for the time that public assistance agency staff will need to spend addressing client questions and documentation of their benefits. These agencies are not staffed to provide tens of thousands or more immigrants with documentation about their enrollment and disenrollment in the additional programs. Such processes will require significant time to create and staff. In the experience of APIAHF and our partners, public assistance agencies already struggle to meet the needs of immigrant clients. It is unlikely they will be able to handle these additional responsibilities.

¹⁸¹ See for example: <https://www.kingcounty.gov/depts/health/locations/health-insurance/access-and-outreach/~media/depts/health/health-insurance/documents/in-service/2018/public-charge-when-safe-for-immigrants-to-get-benefits.ashx>;

¹⁸² See for example: https://www2.ncdhhs.gov/info/olm/manuals/dma/fcm/adm/ma_al19-03.htm; http://file.lacounty.gov/SDSInter/bos/bc/016156_breport031004b.pdf

¹⁸³ See for example: <http://www.alleghenycountypa.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2147491542>; <https://medicaid.ms.gov/wp-content/uploads/2014/03/Chapter102Page1100.pdf>; https://idph.iowa.gov/Portals/1/userfiles/48/21550_Oct2016.pdf; <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-a-determining-eligibility/section-300-citizenship#A315>

XI. The Proposed Rule Burdens Businesses and Will Hurt the Economy

DHS attempted to account for the widespread costs of the proposed rule, but, even beyond those impacts discussed previously in this comment, fails to fully account for significant costs.

The preamble of the proposed rule states that its aim is to reduce immigrants on welfare. But 83 percent of lawfully present immigrants already live in a family with at least one full time worker, a rate comparable to U.S. citizens.¹⁸⁴ Working families often use public assistance to allow them to survive when one earner is laid off or if someone's hours are cut. Without these benefits, they may get sick or lose their home, preventing them from returning to work. Should this rule pass and families avoid benefits, the result may be fewer working immigrant families.

In addition, by setting an arbitrary income threshold in the totality of circumstances test, DHS may be denying entry to younger workers who may, throughout their lifetime, contribute significantly to the country as their income rises.

a. The Agency's Cost Benefit Analysis Fails to Take into Account Large Costs Directly Resulting from The Proposed Rule's Processes

Where DHS does attempt to apply time and cost to the rule, its estimates are wrong or miss key factors that would result in increased costs. For example, the 4.5 hours DHS has estimated would be required to fill out form I-944 is not realistic due to the complex nature of the draft form and the resources and time needed to fill it out accurately. An immigrant without a car may need to spend hours on the bus to reach public assistance agencies to receive copies of their documents. They may need to spend additional dollars and hours with a lawyer to ensure they are filling out the form correctly. They may need help from families and friends in correctly interpreting the instructions, which is far from the plain language level recommended by federal guidelines.¹⁸⁵

b. DHS Underestimates Certain Costs to States

In determining the loss to states due to potential cuts to Medicaid, DHS assumes a Federal Medical Assistance Percentage (FMAP) of 50 percent. This is the rate at which the federal government reimburses states for costs accrued to their Medicaid programs. Yet fewer than one-third of states have a 50 percent FMAP, which can rise as high as 76.39 percent.¹⁸⁶ The resulting loss in federal funds will be far higher, particularly in states with higher FMAPs.

¹⁸⁴ "Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage," Kaiser Family Foundation. (September 24, 2018). Available at: <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

¹⁸⁵ "Federal Plain Language Guidelines." (May 2011). Available at: <https://plainlanguage.gov/media/FederalPLGuidelines.pdf>

¹⁸⁶ "Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier," Kaiser Family Foundation. Available at: <https://www.kff.org/medicaid/state-indicator/federal-matching-rate->

DHS also fails to note that the rule would have a disproportionately negative impact on certain states, those with high immigrant populations, particularly California, Florida, New York, Texas and Illinois. Those states account for 61 percent of the noncitizen population. Just looking at the Asian American population alone, 5.8 million in California, 1.6 million in New York, 1.2 million in Texas and 706,000 in Illinois could be chilled.¹⁸⁷

XII. Conclusion

In conclusion, due to the impact and consequences detailed in these comments, we urge DHS to immediately withdraw this proposed rule. All citations included in this letter should be considered as included in the comments themselves and we expect that DHS will review each of them as if they were. Please contact Amina Ferati, Senior Director of Government Relations (afferati@apiahf.org) or Ben D'Avanzo, Senior Policy Analyst (bdavanzo@apiahf.org) for any questions.

Sincerely,



Kathy Ko Chin
President & CEO

[and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22FMAP%20Percentage%22,%22sort%22:%22asc%22%7D](#)

¹⁸⁷ 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>