Comments

Department of Homeland Security
Notice of Proposed Rulemaking:

*Inadmissibility on Public Charge Grounds*

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Submitted by:

Center on Budget and Policy Priorities
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# Table of Contents

I  **Introduction** .................................................................................................................................1  
   A. Summary of impacts ..........................................................................................................................2  
   B. Guide to CBPP comments .............................................................................................................3  
   C. Conclusion .......................................................................................................................................5  

II  **New Public Charge Definition Is Overbroad and Would Result in Many Who Work and Contribute to Their Communities and the Economy Being Denied Status Adjustment or Lawful Entry** .................................................................................................................................7  
   A. Analysis of data for a single year shows that 3 in 10 U.S.-born citizens participate in one of the programs included in the proposed public charge definition .................................................................7  
   B. Analysis of Census data for a single year shows that many workers participate in one of the programs included in the proposed public charge definition ........................................................................8  
   C. Analysis of longitudinal data from the Panel Survey of Income Dynamics shows that share of U.S.-born citizens receiving assistance over their lifetimes would be significantly higher ........................................9  
   D. New income criterion would keep many out of the United States despite their likely future contributions to the country ..................................................................................................................11  
   E. Broadened public charge definition could lead to racial bias — including implicit bias — in immigration decisions ................................................................................................................................................17  
   F. Rule appears to be based on erroneous assumptions about immigrants, program participation, and the economy ..................................................................................................................................................18  
      1. Immigrants, even those who are not currently well paid, work at a high rate .......................19  
      2. Immigrants perform work that is important to their communities and in the economy .......20  
      3. Immigrants have been found to contribute to the economy to a degree not evident from their earnings alone .........................................................................................................................................21  
      4. Immigrants help counter the effects of the aging population ..................................................23  
      5. Immigrants who sometimes participate in the government assistance programs listed in the proposed rule work at a high rate ................................................................................................25  
      6. Many immigrants with important jobs could be excluded under the proposed rule ..........26  
      7. Immigrants’ children tend to be highly upwardly mobile ..........................................................27  
      8. On net, each additional new immigrant and his or her children can be expected to strongly contribute to the economy and be a net contributor to government finances ........................................28  
      9. Immigrants with only a high school diploma are net contributors .........................................28  
     10. Immigration officials won’t be able to accurately identify only those individuals who, along with their children, will not be net economic contributors .................................................29  
   G. Unworkable bond proposal would not provide reasonable opportunities for entry or adjustment of status to those deemed inadmissible on public charge grounds ..........................................................30  
   H. Proposed scheme distorts the “totality of circumstance” test ...................................................32  

III. **Medicaid, Medicare Part D Low-Income Subsidies, SNAP, and Federal Rental Assistance Should Not Be Added to the Public Charge Definition** ........................................................................35  
   A. Medicaid ........................................................................................................................................36
IV. Proposed Policy Changes Would Lead Immigrant Families to Forgo Needed Assistance and Health Care and Cause Significant Harm to Communities, States, and Individuals

A. The proposed rule would depress benefit participation
B. People unlikely to face a public charge determination would forgo benefits
C. Chill would have harmful short- and long-term impacts on people and society
   1. Consequences of forgoing nutrition assistance
   2. Consequences of forgoing Medicaid
3. Consequences of forgoing rental assistance .......................................................... 64
4. Families could forgo benefits not included in the public charge definition .......... 65

D. Thresholds and limited exemptions would not be enough to halt fear of using benefits .......... 66
   1. Medicaid ........................................................................................................ 66
   2. SNAP ............................................................................................................ 67

V. Use of Benefits Among Children Should Not Be Considered in Public Charge
Determination ........................................................................................................... 69
   A. Nutrition assistance is vital to children and pregnant women .............................. 69
   B. Medicaid provides essential health coverage to children and pregnant women ...... 71
   C. Rental assistance results in better outcomes for children .................................. 73

VI. The Cost-Benefit Analysis Exemplifies and Compounds the Serious Deficiencies in
DHS’s Evaluation of and Justification for the Proposed Rule ..................................... 74
   A. DHS fails to evaluate a key likely impact of the proposed rule: lower immigration .... 75
   B. Proposed rule lacks analysis of purported “benefits” of the proposed rule ......... 76
   C. Lack of estimate of denials of status adjustment and lawful entry means that key costs to
      the country are missing from analysis .............................................................. 77
      1. Estimates needed for both denials and reduced applications for admission, change of
         status, or re-entry ......................................................................................... 78
      2. Proposed rule needs to analyze the economic costs incurred as a result of increased denials
         of status adjustment and entry under the rule ............................................. 78
   D. DHS provides no estimates of the overall impact of immigrants denied entry or status adjustment
to public finances ....................................................................................................... 81
   E. Analysis needs to consider extent and costs of family separation .......................... 82
   F. DHS’ evaluation of the extent to which immigrant families forgo benefits out of fear of negative
      immigration consequences is incomplete and inaccurate .................................. 90
      1. DHS basic estimates are deeply flawed ......................................................... 91
      2. Calculations of the state share of benefits forgone are cursory and inadequate .... 97
   G. DHS fails to adequately describe or estimate the potential harm caused when immigrant families
      forgo needed assistance due to the proposed rule ............................................. 99
      1. Immediate and long-term harms, creating further long-term costs for individuals, families,
         communities, and the country ....................................................................... 100
      2. Monetization of harms ............................................................................... 101
      3. Costs associated with poorer prevention and treatment of communicable diseases ... 102
      4. Uncompensated care .................................................................................. 105
      5. DHS does not adequately evaluate the impacts to businesses and states .......... 107
      6. DHS does not adequately address costs to entities that will assist families facing hardship 108
   H. DHS does not adequately evaluate the impacts of the proposed bond regime, including transfers to
      surety companies .............................................................................................. 108
      1. How many people will secure public charge bonds ..................................... 109
2. The costs of bonds for those using them to overcome the proposed public charge definition

3. Harm to families that fall on hard times and include a family member with a public charge bond

4. Benefits for bond surety companies

5. Costs to states and localities

I. The NPRM fails to fully evaluate costs associated with both understanding the proposed rule and, more importantly, communicating with immigrant families — and organizations that work with immigrant families such as religious institutions, schools, and social service agencies — about the proposed rule

   1. Communicating to those directly affected
   2. Communicating to reduce chill
   3. Costs to individuals and families go far beyond reading time

J. The NPRM fails to address other administrative and compliance costs

K. Compliance cost opportunity cost estimate

APPENDIX I

Appendix II has been submitted in separate files.
I Introduction

This comment is submitted on behalf of the Center on Budget and Policy Priorities in response to the Department of Homeland Security’s Notice of Proposed Rulemaking on Inadmissibility on Public Charge Grounds (NPRM or “proposed rule” hereafter) published in the Federal Register on October 10, 2018. The Center on Budget and Policy Priorities (CBPP) is a nonpartisan research and policy institute. CBPP pursues federal and state policies designed to reduce both poverty and disparity, to promote opportunity, and to achieve fiscal responsibility in equitable and effective ways. We apply our expertise in programs and policies to inform debates on issues affecting low- and moderate-income people and fiscal policy. Through our work we have developed a deep knowledge of eligibility and enrollment policies and processes as well as the short- and long-term benefits of major federal benefit programs, including benefits specifically implicated in the proposed public charge rule: SNAP, Medicaid, Medicare, and federal rental assistance. Our staff has deep knowledge and expertise on analysis of statistical data including poverty, income and employment trends, and the impact of safety net programs on poverty and social mobility. Appendix I provides brief biographies of CBPP experts who contributed to these comments. We appreciate the opportunity to comment on the important policy issues presented by the NPRM.

The NPRM proposes significant changes to decades-old policies and practices for determining who is “likely to become a public charge.” The public charge determination is a critical part of the nation’s immigration laws because many individuals seeking to adjust their immigration status or seeking to enter the U.S. lawfully are subject to a public charge determination.¹ Those subject to the determination who are found likely to become a public charge are denied status adjustment or lawful entry. (“Lawful entry” throughout these comments means initial entry or re-entry of lawful permanent residents [LPRs] who have left the country and are subject to a public charge determination in order to return.) Those seeking a status adjustment already reside in the U.S.; many have family members who are permanent residents or U.S. citizens. And, many seeking lawful entry have family members they are seeking to reunify with who are permanent residents of the U.S. or U.S. citizens. When individuals are denied status adjustment, they often are forced to leave the U.S., while those denied lawful entry are unable to come or return to the U.S. Decisions about public charge, then, will affect whether families will be unified or separated and who will be part of our communities.

These decisions are about the basic character of our nation. For decades, caselaw has held that individuals “incapable of earning a livelihood” should be considered public charges, and the public charge determination was based on the likelihood that an individual would rely on government cash assistance for more than half of his income or on government-provided institutional care. The public charge standard was not used to keep people out of the country — or to remove them — if they worked hard at lower-paying jobs and thus contributed to their communities and the economy but sometimes needed supplemental assistance. In short, public charge has not generally been used

¹ The proposed rule would also extend certain aspects of the newly defined public charge assessment to non-immigrants seeking to extend or change their status. We object to this extension. Except for very narrow circumstances, most non-immigrants would not qualify for public benefit programs identified in the proposed rule, but changes in the rule for non-immigrants would result in more confusion among immigrant families and in some cases result in eligible non-immigrants (such as pregnant women or children) forgoing needed services, such as treatment for a serious medical condition.
to keep out or remove individuals who are able and willing to work hard to build a life in the United States but who start out with modest means. Moreover, the country has been better for this policy. Extensive research has documented the positive impact of immigrants on the nation. Immigrants fill important jobs and contribute to economic growth, and research has shown that immigrants raise children who demonstrate substantial upward mobility, attaining more education than their parents and moving up the economic ladder.

The proposed rule would significantly broaden the public charge definition and, in turn, change the character of the country to one that only welcomes those already with substantial wealth and income. Rather than denying entry or status adjustment to individuals who are or are likely to become primarily dependent on government cash assistance and institutional care, the proposed changes would put in place a public charge definition so broad that more than half of all U.S.-born citizens could be deemed a public charge — and, by extension and implication, considered a drag on the United States — if this definition were applied to them.

The proposed rule would deprive the United States of the contributions of many hard-working immigrants who want to build a better life for themselves as well as their children, and it would result in immigrant families forgoing assistance they need out of fear of negative immigration consequences. It should be rejected in whole.

These issues are discussed briefly in this introduction and in depth in our full comments.

A. Summary of impacts

Under the proposed rule, individuals determined likely to receive not only cash assistance or government-provided institutional care but also nutrition assistance through SNAP, health care through Medicaid, affordable drugs through the Medicare Part D Low-Income Subsidy program, and assistance affording housing through federal rental assistance programs at any time over the succeeding decades of their lives would be deemed “likely to become a public charge” and would generally be denied status adjustment or lawful entry into the U.S., except in narrow circumstances where they can present a bond (which as described below, is unlikely to provide a path to a favorable immigration decision for many individuals).

The proposed rule would have two main impacts.

• It would increase, likely dramatically, the number of individuals denied status adjustment or lawful entry/reentry due to a public charge determination because they come from modest means rather than on the basis of their abilities, their family ties, or their (and their families’) willingness to work hard to build a life in the U.S.

• It would cause immigrant families — many of whom will not face a public charge determination and include children who are U.S. citizens — to forgo participation in programs such as SNAP, Medicaid, and housing assistance out of fear that receiving benefits or health coverage through these programs would have negative immigration consequences. The policies embedded in the NPRM send a clear message: in the federal government’s view, immigrants who access benefits for which Congress has made them eligible are harming the country and are not welcome. This message is far clearer than the confusing details of
immigration law and the nuances of who is, and who is not, subject to a public charge
determination.

The NPRM appears premised on several assumptions, including: (1) immigration officials can
accurately predict which individuals will receive any of a far broader set of benefits, at levels above
confusing thresholds, at any point decades into the future; and (2) denying status adjustment or
entry to individuals based on immigration officials’ predictions — faulty or not — of future benefit
receipt would be a positive for the United States. There is strong evidence that these assumptions
are wrong and that proceeding with this proposed rule would harm families, communities, and the
economy. Much of this evidence is missing from the NPRM’s explanation of the proposed rule and
its likely consequences.

B. Guide to CBPP comments

The remainder of these comments will discuss the deep flaws with the NPRM. Specifically, the
comments proceed as follows:

• Section II: New Public Charge Definition Is Overbroad and Would Result in Many
  Who Work and Contribute to their Communities and the Economy Being Denied
  Status Adjustment or Lawful Entry. This section analyzes the extent to which the definition
is overbroad and would, if applied to US.-born citizens, result in likely more than half of all
such individuals being determined a public charge. It shows that in just a single year, some 3
in 10 native-born U.S. citizens receive a benefit included in the proposed public charge
definition; over longer periods of time, benefit receipt is significantly higher. If one looks at
the U.S. native-born citizen population in 2014 and considers benefit receipt over the 1998-
2014 period, some 40 to 50 percent received one of the benefits in the public charge
definition. If we had data that allowed us to look at native-born U.S. citizens over the course
of their full lifetimes, benefit receipt would exceed 50 percent of the population.

The section also explores how the proposed public charge criteria would discriminate against
individuals from poorer countries, regardless of their talents, because the incomes of the vast
majority of people from many countries fall below the new 125 percent-of-poverty threshold
included as a consideration in the public charge determination under the proposed rule. The
section also discusses why the proposed rule could lead to more incidents in which statistical
discrimination or implicit bias affects immigration officials’ decisions on status adjustment and
entry for people of color.

There is an extensive academic literature on the contributions of immigrants to the U.S.
economy and the upward mobility exhibited by both immigrants and their children; this
section reviews this research and its relevance to consideration of the proposed rule.
Immigrants play an important role in a broad set of industries, and the most authoritative
evidence does not show that recently arrived immigrants impose a difficult burden on
taxpayers. As the comments discuss, the proposed rule reflects a flawed understanding of the
U.S.’s dynamic labor market and the upward economic trajectory of most immigrants; many
individuals, including both immigrants and native-born U.S. citizens, rely on public benefits at
some point during their lives, but of those who do either work at the same time or go on to
work and contribute their labor to the economy.
The proposed rule also sets forth policies and processes for public charge bonds — and our comments discuss why these bonds are unlikely to provide a pathway for many individuals to overcome a public charge determination. Finally, our comments discuss the ways in which the proposed rule skews the long-standing “totality of circumstances” test. In particular, the comments discuss why the changes undermine the test by creating heavily weighed factors and a large number of financial considerations that heighten the likelihood that individuals of modest means — regardless of their talents and willingness to work hard — will be denied status adjustment or entry on a public charge basis.

- **Section III: Medicaid, Medicare Part D Low-Income Subsidies, SNAP, and Federal Rental Assistance Should Not Be Added to the Public Charge Definition.** This section discusses the problems that arise from the inclusion of each of these benefit programs in the expanded definition of public charge, including both why they should not be considered when determining whether someone should be denied entry or status adjustment and why their inclusion would result immigrant families forgoing needed assistance. There is a substantial body of research on the positive impacts of these programs on short- and longer-term outcomes for those who participate in them; this section reviews that research and discusses its relevance to consideration of this NPRM. The section discusses the ways in which the proposed “threshold” for the amount or duration of benefits received would lead to individuals being defined as a public charge based on low levels of benefit receipt and why immigration officials would not be able to implement these thresholds when predicting future benefit receipt. And the comments discuss why benefit receipt within the last 36 months should not be a heavily weighed factor and concerns about retroactively applying the new thresholds to past receipt of cash benefits. Finally, this section of the comments discuss the steps states and localities would have to take to try to reduce confusion about the proposed rule and reduce the degree to which families that are unlikely to face a public charge determination forgo benefits their families need.

- **Section IV: Proposed Policy Changes Would Lead Immigrant Families to Forgo Needed Assistance and Health Care and Cause Significant Harm to Communities, States, and Individuals.** This section reviews the evidence suggesting that the rule would lead a significant number of immigrant families — including many who will never face a public charge determination — to forgo participation in programs such as SNAP and Medicaid, and the negative impacts this “chill effect” would have on individuals, families, and health providers, as well as the country overall, over the short and longer term. The section also explains why the thresholds for benefit receipt will not reduce confusion or fear among immigrant families.

- **Section V: Use of Benefits Among Children Should Not Be Considered in Public Charge Determinations.** This section responds to a request by DHS for comment on whether benefits received by children should be considered as part of the public charge determination and explains why such benefits should not be considered. The comments describe the research evidence about the ways in which children would be harmed if they (and pregnant women) forgo needed assistance, including the long-lasting negative impacts on children’s health and educational outcomes.

- **Section VI: The Cost-Benefit Analysis Exemplifies and Compounds the Serious Deficiencies in DHS’s Evaluation of and Justification for the Proposed Rule.** This section of our comments discusses a myriad of ways that the NPRM fails to provide the analyses needed by both the public and policymakers to evaluate the likely impact of the
proposed rule and weigh the costs and benefits. DHS’s overall analysis of the proposed rule, including its discussion of costs and benefits in the Executive Summary and “Cost-Benefit Analysis,” does not provide the sound qualitative discussion or quantitative estimates needed to evaluate the proposed rule’s likely impacts. DHS’s analysis fails to answer basic questions related to the individuals and entities the proposed rule would harm, how the proposed rule would affect the economy in the short and long term, and how it would affect key sectors within the economy. This means that the public, whose comments are sought on this proposed rule, lacks the information and data necessary to fully evaluate the proposed rule or comment on key aspects of the justification for the proposed rule. Moreover, if such information was also unavailable to policymakers, the lack of analysis also means that they have crafted policies without the information they need to understand its impacts.

Our comments include an extensive Appendix (divided into multiple files for purposes of submission through the online portal) that provides the text of all of the source materials referenced throughout our comments, to ensure that DHS and other agencies considering the policy issues raised by the proposed rule will have complete and simple access to the relevant research across multiple fields that should be considered. The Appendix with this reference material is organized by the first author's last name, so that for any reference, it is clear which file the document resides in. Each Appendix file is searchable, so that a user can quickly find any particular reference and has a table of contents.

It is important to note that we have confined our comments to the set of issues on which we have significant expertise. As a result, there are many elements of the proposed rule that these comments do not discuss. We have deep concerns about elements on which we have not commented, such as the degree to which individuals with medical conditions will be kept out of or removed from the country.

C. Conclusion

This proposed rule makes broad and troubling changes in our nation’s immigration policies, denying status adjustment and lawful entry to a broad set of individuals who are not already wealthy but who are committed to their families and the work of building a life in the United States. The proposed rule reflects a dark vision of the United States — as an unwelcoming nation that wants to keep out people who seek to re-join family and climb the economic ladder, due to their current modest means and the erroneous assumption that they will not contribute to our communities, our economy, and our nation.

Had this rule been in effect in prior decades, the United States would have been deprived of the talents of large numbers of immigrants who moved to this country, worked hard and raised families, and saw their children attain more education and move up the economic ladder. The U.S. is a dynamic economy that has benefitted over many decades — including recently, when immigrants, often young people with many years of work ahead of them, have not only built lives here but helped invigorate our communities. One only need look around at our communities — and take seriously the rich data and academic literature — to see the contributions immigrants make, including immigrants who perform important jobs, from agriculture workers to home health aides to construction workers to custodial staff, and often (at least initially) for low pay.
On this basis alone, this proposed rule should be jettisoned. But, unfortunately, the harm goes even further. This proposed rule would add to the fear and confusion in immigrant communities that could translate into immigrant families, including U.S. citizen children and pregnant women, forgoing benefits and the health care they need.

This proposed rule is unsupported by evidence and will hurt families, communities, and the country. It should not become a Final Rule.
II New Public Charge Definition Is Overbroad and Would Result in Many Who Work and Contribute to Their Communities and the Economy Being Denied Status Adjustment or Lawful Entry

The proposed rule could result in large numbers of individuals being forced out of the country or denied entry based on the erroneous assumption that they — and their children — would not contribute in important and meaningful ways to local communities and the U.S. economy.

Under the proposed rule, immigration officials would deny status adjustment or lawful entry to those they judge likely to become a public charge at any point in the future. The proposed rule significantly expands the definition of “public charge” in two major ways.

First, it broadens the list of public benefit programs considered in a public charge determination. Second, instead of looking at whether more than half of an immigrant’s income comes (or would likely come in the future) from cash assistance tied to need, as they do now, immigration authorities would consider whether the individual received, or is likely to receive, modest amounts of any of these benefits — even if the benefits reflect only a small share of an immigrant’s total income. While the proposed rule does include a threshold for benefit receipt (discussed in Section III.E.), the threshold is constructed in such a way that any projected future receipt would likely bar an applicant from status adjustment or entry.

This section analyzes the overbroad nature of the definition and the evidence on the apparent underlying premise — that individuals denied entry or status adjustment under the proposed rule would fail to contribute to the nation’s economy.

A. Analysis of data for a single year shows that 3 in 10 U.S.-born citizens participate in one of the programs included in the proposed public charge definition

The breadth of the rule’s expansive definition of public charge is clear when it is applied to U.S.-born citizens. If U.S.-born citizens were subjected to a public charge determination, a significant share would be considered a public charge. Looking at just one year of program participation shows that 3 in 10 of U.S.-born citizens receive one of the main benefits included in the proposed definition. By contrast, about 5 percent of U.S.-born citizens meet the current benefit-related criteria in the public charge determination. The benefits included in the proposed definition serve a far broader group of low- and moderate-income families than those served by cash assistance and institutional care programs (those considered under the current definition), many of whom include working adults who need help at some points to make ends meet.

These U.S. citizens — and hard-working immigrants who also earn low wages and may at some point need assistance — are assets to our country, communities, and economy. They work in important fields and help our economy function.

To calculate the figures above we used the Current Population Survey, and we corrected for underreporting of SNAP, TANF, and SSI receipt in the Census survey using the Department of
Health and Human Services/Urban Institute Transfer Income Model. The figures are for 2015, the latest year for which these corrections are available.

Our program participation calculations include SNAP, TANF, SSI, Medicaid, housing assistance, and state General Assistance programs. There are several ways in which our estimates **understate** the share of U.S.-born citizens who would be deemed a public charge under the proposed rule:

- Because these figures reflect benefits received only during a single year, the 3 in 10 figure understates the share of U.S.-born citizens who would be determined a public charge if such a determination were applied to them. The rule calls on immigration officials to determine whether someone seeking status adjustment or lawful entry is receiving this set of benefits or is likely to receive them at any point in the future. If immigration authorities had perfect foresight, virtually anyone who would receive a benefit (above the threshold set forth in the rule) would be barred from adjustment/entry into the country. Thus, when considering how many U.S.-born citizens would be considered a public charge under the proposed rule, we would want to look at receipt over each person’s lifetime because the share receiving one of these benefits over their lifetime is far higher than the share receiving a benefit in a single year. The impact of analyzing benefit receipt over a longer period of time is explored in more detail below.

- The one-year estimates do not correct for the underreporting of Medicaid or account for subsidies in the Medicare Part D program.

There are some modest ways that the one-year estimate overstates the share of U.S.-born citizens who meet the public charge test in that year. The rule disregards program participation if the benefit amounts or durations fall below thresholds established in the rule. Due to data limitations, we cannot appropriately model all of those provisions. However, as discussed in Section III.E(1), we think that those provisions would be extremely difficult to apply when making a prospective determination, so any projected future receipt would likely bar an applicant from status adjustment or entry. And, when the Census Bureau asks about health coverage, it asks about Medicaid and the Children’s Health Insurance Program (CHIP) together, so the data on Medicaid also include CHIP recipients.

**B. Analysis of Census data for a single year shows that many workers participate in one of the programs included in the proposed public charge definition**

Another way to examine the breadth of the rule’s definition of public charge is to apply it to U.S. workers. If all U.S. workers were subjected to a public charge determination, a significant share would be considered a public charge under the proposed rule. Looking at just one year of program participation shows that 16 percent of U.S. workers receive one of the main benefits included in the proposed definition. By contrast, 1 percent of U.S. workers meet the current benefit-related criteria in the public charge determination.

The reality of the current U.S. labor market is that many workers combine earnings from their jobs with government assistance in order to make ends meet. Table 1 shows that a significant percent of workers in all major industry groups would be defined as a public charge if the definition
were applied to them. Defining these workers as a public charge is inconsistent with the fact that these workers play an important role in these industries.

**TABLE 1**

*If Applied to all Workers, Percent That Would be Defined as a Public Charge Under Current Rules Compared to Proposed Rule, by Major Industry Group*

<table>
<thead>
<tr>
<th>Industry Group</th>
<th>Percent defined as public charge under current rules*</th>
<th>Percent defined as public charge under proposed rule**</th>
</tr>
</thead>
<tbody>
<tr>
<td>All workers</td>
<td>1%</td>
<td>16%</td>
</tr>
<tr>
<td>Leisure and hospitality</td>
<td>1%</td>
<td>27%</td>
</tr>
<tr>
<td>Wholesale and retail trade</td>
<td>1%</td>
<td>19%</td>
</tr>
<tr>
<td>Other services (repair and maintenance, private household workers, etc.)</td>
<td>1%</td>
<td>19%</td>
</tr>
<tr>
<td>Agriculture, forestry, fishing and hunting</td>
<td>3%</td>
<td>18%</td>
</tr>
<tr>
<td>Construction</td>
<td>1%</td>
<td>18%</td>
</tr>
<tr>
<td>Transportation and utilities</td>
<td>0%</td>
<td>15%</td>
</tr>
<tr>
<td>Educational and health services</td>
<td>1%</td>
<td>15%</td>
</tr>
<tr>
<td>Professional and business</td>
<td>1%</td>
<td>14%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>0%</td>
<td>13%</td>
</tr>
<tr>
<td>Information (publishing, broadcasting, telecommunications, etc.)</td>
<td>0%</td>
<td>13%</td>
</tr>
<tr>
<td>Financial activities</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Mining</td>
<td>0%</td>
<td>9%</td>
</tr>
<tr>
<td>Public administration</td>
<td>0%</td>
<td>8%</td>
</tr>
</tbody>
</table>

*Current definition is modeled as: Personally receiving more in TANF, SSI, and General Assistance than in earnings, or member of a family that receives more in TANF, SSI, and General Assistance than earnings.

**Proposed definition is modeled as: Personally receiving any SNAP, Medicaid/CHIP, housing assistance, SSI, TANF, or General Assistance.

Source: CBPP analysis of Census Bureau data from the Current Population Survey and SPM public use files, with corrections for underreported government assistance from the Department of Health and Human Services/Urban Institute. These data are for 2015, the most recent year for which these corrections are available.

**C. Analysis of longitudinal data from the Panel Survey of Income Dynamics shows that share of U.S.-born citizens receiving assistance over their lifetimes would be significantly higher**

The Panel Study of Income Dynamics (PSID) is a long-running longitudinal survey that measures, among many other characteristics, families’ income and receipt of public benefits. The PSID, conducted by the University of Michigan’s Institute of Social Research, began in 1968 and follows about 5,000 families (and the families that branched off from the original survey respondents) annually.
Analysts at the Urban Institute have used PSID data to analyze program participation in 2014 and over the 1998-2014 period. According to a forthcoming analysis by the Urban Institute, the PSID shows that 22 percent of the U.S.-born population participated in 2014 in at least one of five main programs included in the public charge rule, namely, SNAP, Medicaid, TANF, SSI, and housing assistance. (The PSID does not include data on state General Assistance or Medicare Part D Low Income Subsidies.) This estimate is lower than the single-year figures presented above because, unlike the data in Section II.A, the PSID data are not corrected for the tendency of survey respondents to underreport receipt of government benefits. (Using the Current Population Survey and baseline data from the Health and Human Services/Urban Institute Transfer Income Model version 3 (TRIM3) to correct for the underreporting of TANF, SSI, and SNAP, we find that 29 percent of the U.S.-born population participated in one of the five programs in 2014. The CPS/TRIM figure would be even higher if we were able to correct for the underreporting of Medicaid.)

Nevertheless, the strength of the PSID is its ability to collect data about program participation over a longer period of a person’s life. The Urban Institute finds that 40 percent of U.S.-born individuals present in the PSID survey in 2015 participated in one of the five programs over the 1998-2014 period.

If the analysis could have corrected for the underreporting of benefit receipt in the PSID, the corrected figure undoubtedly would have been higher. The CPS/TRIM-based estimate of the share of individuals who participated in one of the benefit programs in 2014 is about 1.3 times as large as the PSID-based estimate. Using this adjustment factor, we can calculate a likely upper bound on the share of individuals in the PSID sample who received one of the benefits over the full period by applying the annual underreporting factor (1.3) to the estimate of benefit receipt over the full period. When we do this, we estimate an upper bound of roughly 50 percent of U.S.-born citizens who participated in SNAP, Medicaid, TANF, SSI, or housing assistance in at least one year over the 1998-2014 period.

But underreporting is only one reason that the 40 percent estimate described above is lower than the share of U.S.-born citizens who receive benefits in at least one year over this period and well below the figure for the share of U.S.-born citizens who receive one of these benefits at some point over their lifetimes.

In looking at benefit receipt over the 1998-2014 period, the PSID only provides data on benefit receipt for most programs every other year. The PSID dataset analyzed by the Urban Institute thus lacks any measure of participation in odd-numbered years for some programs (such as Medicaid) and, in the case of SNAP (where the data include a question on program participation covering each

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2 The survey data were collected between 1999 and 2015, but the program participation questions generally ask about participation in the previous calendar year, or 1998-2014.

3 Analysis was done by Diana Elliott from the Urban Institute using a PSID dataset created by Sara Kimberlin from the California Budget & Policy Center and Noura Insolera from the University of Michigan’s Institute of Social Research, which runs the PSID.

4 Throughout this PSID analysis, “U.S. born” refers to individuals in the PSID’s main sample, and excludes a later, supplemental sample of immigrants added to the PSID in 1997-1999. The main sample actually includes a small number of immigrants, including some who were present in the U.S. since 1968 when the PSID began or those who joined existing PSID households in later years.
of the last two years), likely suffers from decreased reporting in the odd years because of the longer, two-year recall period.

More importantly, these data do not measure benefit receipt over individuals’ entire lives. Using PSID data for 1998-2014 is an important improvement over using a single year of data to analyze the share of U.S.-born citizens who receive one of the benefits included in the proposed rule’s public charge definition, but it still captures only a portion of most respondents’ lifetimes and significantly underestimates the share of U.S.-born citizens who receive a benefit at some point during their lives. If we were able to capture more years and a higher share of people’s childhoods with data that are corrected for underreporting, we would find that more than half of the U.S.-born population participated in SNAP, Medicaid, TANF, SSI, or housing assistance over their lifetimes.

Additional PSID analyses make this clear. Benefit receipt is higher during childhood than during adulthood, so capturing childhood years increases the share receiving benefits at some point. In our own calculations using the same longitudinal PSID dataset used by the Urban Institute, from 1998-2014, we find that 55 percent or more of children born during this period (in non-immigrant PSID households) are ever observed to receive one of the five benefits over the period. From the latter finding alone, it is clear that a majority of U.S.-born citizens will receive one of these benefits at some point over the course of their lives.

The fact that the proposed public charge definition effectively could deem more than half of all U.S.-born citizens as “public charges” based on their actual benefit receipt over their lifetimes shows the sweeping nature of the proposed rule.

**D. New income criterion would keep many out of the United States despite their likely future contributions to the country**

Both currently and under the proposed rule, immigration officials must decide whether certain individuals seeking status adjustment or lawful entry are likely to become a public charge. Under the proposed rule, that means immigration officials must determine whether someone seeking status adjustment or lawful entry is likely to receive one of the named benefits (at a level above the threshold) at any point over the rest of their lifetimes. The proposed rule sets forth various criteria that immigration officials are supposed to weigh when making this forward-looking prediction.

The proposed rule establishes a new income criterion that would count as a negative factor in the public charge determination. Under this “income test,” having family income below 125 percent of the poverty line — about $31,375 for a family of four, which is more than twice what full-time, minimum-wage work pays – would count against an individual in the public charge determination.

Many low-wage workers have earnings below this level and could be deemed “likely to become a public charge” under the proposed rule, even if they receive no benefits. That suggests that few individuals with low or modest incomes would be granted status adjustment or lawful entry to the United States. The impact would be significant both for families and for communities. Families would be separated by the denial of status or lawful entry, harming those individuals — including many U.S. citizens — who would be deprived of the presence of their family members. Children in the U.S. separated from parents under this policy would suffer trauma that could have lifelong negative impacts and reduce their future educational and job success in the U.S. (As discussed in Section VI, the proposed rule does not adequately analyze these negative impacts.)
For many people seeking to enter from a country where incomes in general are much lower than in the U.S., that standard could be out of reach. The 125 percent test will disproportionately affect immigrants from poor countries and have a racially disparate impact on who is allowed into the U.S. The World Bank provides an online data tool that allows users to estimate what percent of the population from different countries is below different poverty thresholds. (http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx) To approximate 125 percent of the U.S. poverty line, one can use a $20 per person per day poverty line in the World Bank online tool. According to the World Bank tool, 13 percent of the U.S. population is below the $20 per person per day poverty line. (Similarly, 15 percent of the U.S. population is below 125 percent of the U.S. poverty line.)

If we apply that $20 a day threshold to rest of the world, many individuals — including those who would bring hard work, ingenuity, creativity, and an entrepreneurial spirit to this country — would be below that threshold, including:

- 80.8 percent of the world population;
- 99.2 percent of the population of South Asia;
- 98.5 percent of the population of Sub-Saharan Africa; and
- 79.1 percent of the population of Latin America and the Caribbean.

Of course, the figures are much different in wealthy countries. In countries the World Bank defines as “high income,” only 14.4 percent of people in those countries would fall below the 125 percent threshold.

Table 2 shows the percent of the population of each country with income below the $20 per person per day poverty line in the World Bank online tool. It ranks countries by the percent of the population with income below that threshold. (These calculations use data for 2013 because the data for that year are available for more countries. The World Bank tool allows users to use 2015 data for a more limited number of countries.)

<table>
<thead>
<tr>
<th>Country</th>
<th>Percent of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norway</td>
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</tr>
<tr>
<td>Luxembourg</td>
<td>2.5</td>
</tr>
<tr>
<td>Switzerland</td>
<td>2.7</td>
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<tr>
<td>Iceland</td>
<td>4.2</td>
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<tr>
<td>Denmark</td>
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</tr>
<tr>
<td>Finland</td>
<td>5.3</td>
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<tr>
<td>Austria</td>
<td>5.5</td>
</tr>
<tr>
<td>Germany</td>
<td>7.0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>7.2</td>
</tr>
<tr>
<td>France</td>
<td>7.7</td>
</tr>
</tbody>
</table>
### TABLE 2

#### Percent of population with income below $20 per person per day

<table>
<thead>
<tr>
<th>Country</th>
<th>Percent of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
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<tr>
<td>Belgium</td>
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</tr>
<tr>
<td>Sweden</td>
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<tr>
<td>Canada</td>
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<tr>
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<tr>
<td>Bosnia and Herzegovina</td>
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<td>Panama</td>
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<td>Poland</td>
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<td>Country</td>
<td>Percent of Population</td>
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<tr>
<td>--------------------------------------------------</td>
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<td>Montenegro</td>
<td>83.3</td>
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<tr>
<td>Venezuela, Republic Bolivariana de</td>
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<tr>
<td>Peru</td>
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<td>Namibia</td>
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<td>West Bank and Gaza</td>
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<tr>
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<td>Mexico</td>
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<tr>
<td>El Salvador</td>
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<td>Nicaragua</td>
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<td>Mongolia</td>
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<td>Bhutan</td>
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<tr>
<td>Tuvalu</td>
<td>95.0</td>
</tr>
</tbody>
</table>
### TABLE 2

**Percent of population with income below $20 per person per day**

<table>
<thead>
<tr>
<th>Country</th>
<th>Percent of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkmenistan</td>
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<tr>
<td>Sri Lanka</td>
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<td>Moldova</td>
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</tr>
<tr>
<td>Vietnam</td>
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<tr>
<td>Fiji</td>
<td>96.2</td>
</tr>
<tr>
<td>Comoros</td>
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<td>Algeria</td>
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<tr>
<td>Georgia</td>
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<td>Ghana</td>
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<td>Philippines</td>
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<td>Kosovo</td>
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<tr>
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<tr>
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<td>Albania</td>
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<tr>
<td>Djibouti</td>
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<td>Guinea-Bissau</td>
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<td>Kiribati</td>
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<td>Myanmar</td>
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<td>Armenia</td>
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<td>Mauritania</td>
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<td>Mozambique</td>
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<tr>
<td>Lao People's Democratic Republic</td>
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</tr>
<tr>
<td>India</td>
<td>99.2</td>
</tr>
<tr>
<td>St. Lucia</td>
<td>99.2</td>
</tr>
</tbody>
</table>
TABLE 2

Percent of population with income below $20 per person per day

<table>
<thead>
<tr>
<th>Country</th>
<th>Percent of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cote d'Ivoire</td>
<td>99.3</td>
</tr>
<tr>
<td>Yemen, Republic of</td>
<td>99.3</td>
</tr>
<tr>
<td>Lesotho</td>
<td>99.3</td>
</tr>
<tr>
<td>Rwanda</td>
<td>99.3</td>
</tr>
<tr>
<td>Pakistan</td>
<td>99.3</td>
</tr>
<tr>
<td>Uganda</td>
<td>99.4</td>
</tr>
<tr>
<td>Nepal</td>
<td>99.4</td>
</tr>
<tr>
<td>Kenya</td>
<td>99.4</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
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</tr>
<tr>
<td>Benin</td>
<td>99.5</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>99.5</td>
</tr>
<tr>
<td>Chad</td>
<td>99.5</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>99.6</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>99.6</td>
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<td>Solomon Islands</td>
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<td>Malawi</td>
<td>99.6</td>
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<td>Ethiopia</td>
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<td>Bangladesh</td>
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<td>Nigeria</td>
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<tr>
<td>Tanzania</td>
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<tr>
<td>Togo</td>
<td>99.7</td>
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<td>Burkina Faso</td>
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<td>Senegal</td>
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<td>Guinea</td>
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<td>Burundi</td>
<td>99.9</td>
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<td>Sierra Leone</td>
<td>99.9</td>
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<tr>
<td>Madagascar</td>
<td>99.9</td>
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<td>Niger</td>
<td>99.9</td>
</tr>
<tr>
<td>Timor-Leste</td>
<td>99.9</td>
</tr>
<tr>
<td>Liberia</td>
<td>99.9</td>
</tr>
<tr>
<td>South Sudan</td>
<td>100.0</td>
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<tr>
<td>Congo, Democratic Republic of</td>
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<tr>
<td>Sao Tome and Principe</td>
<td>100.0</td>
</tr>
<tr>
<td>Mali</td>
<td>100.0</td>
</tr>
</tbody>
</table>


These data show how the application of the 125 percent threshold to potential immigrants living abroad would have a dramatic effect on who would be allowed to come in to the U.S. lawfully to re-join family.
The fact that wage rates in a country are low is not determinative of a potential immigrant’s core traits and skills or ability to develop skills and succeed in the United States, or the likelihood that (as discussed below) the immigrant’s children will attain significantly more education than the immigrant him/herself. Indeed, throughout our history, poor individuals have come to the United States and have achieved significant upward mobility, helping to grow the nation and its middle class, its industries, and its innovation sector.

E. Broadened public charge definition could lead to racial bias — including implicit bias — in immigration decisions

Broadening the definition of public charge to include a much larger set of benefits whose receipt is common among all Americans opens the door to increased discrimination in the adjudication of adjustment and lawful entry applications based on race, ethnicity, and country of origin.

Under current policy, immigration officials have significant discretion when making the public charge determination to weigh various factors and make a judgment, but that discretion will effectively broaden under the proposed rule. Currently, immigration officials are trying to answer a very narrow question: Is someone likely to become primarily dependent on a narrow range of benefits that only a small share of Americans receive? And, some immigrants who are determined likely to become a public charge can overcome the finding with a legally enforceable affidavit of support.

In contrast, under the proposed rule, immigration officials would be asked to predict whether an individual is likely to receive at some point in the future any of a much broader range of benefits — benefits that a significantly larger share of Americans receive. (And, under the proposed rule, it appears likely that fewer individuals would be able to overcome a public charge determination through an Affidavit of Support.) The Administration apparently expects that immigration officials would deny a larger group of individuals adjustment or permission to lawfully enter under the new standards (though, as discussed in Section VI.C., the proposed rule fails to provide any estimates of the extent to which individuals would be denied adjustment or entry as a result of these changes).

Given the more complex prediction that immigration officials would have to make, their discretion would likely affect the outcome for a larger group of individuals. That discretion, in turn, could be influenced by implicit (or explicit) racial bias. Specifically, given higher rates of benefit receipt among U.S. citizens of color for the benefits now included in the public charge definition, immigration officials may feel justified in using “statistical discrimination” to keep out large numbers of people from certain countries or racial groups, and deny adjustment or entry to people of color at higher rates than similarly situated white individuals.

Using just one year of benefit receipt, Table 3 shows the percent of people who would be defined as a public charge using the current rules compared to the proposed rule, if those rules were applied to U.S.-born citizens. If one applied the new public charge definition of the proposed rule to U.S.-born citizens, roughly half of Black U.S.-born citizens (47 percent) and Hispanic U.S.-born citizens (50 percent) could be defined as a public charge, compared to 21 percent of Non-Hispanic white U.S.-born citizens.

5 Statistical discrimination refers to the phenomenon of a decision-maker using observable characteristics of a group as a proxy for unobservable characteristics of an individual that belongs to that group.
Immigration officials are likely aware that Black and Hispanic U.S.-born citizens are more likely to receive benefits than white U.S.-born citizens, and this may cause them to assume — consciously or unconsciously — that individuals from certain racial and ethnic groups (or from certain countries or regions) are more likely to receive a benefit at some point in the future than similarly situated white individuals seeking entry or status adjustment.

Higher rates of poverty and benefit receipt in the U.S. among people of color are due to (among other factors) a history of slavery and discrimination, unequal education, job and housing opportunities, and for some recent immigrants, lower educational opportunities in their home countries. As discussed below, these opportunities are more plentiful in the U.S., resulting in higher educational attainment among the children of lower-skilled immigrants.

The rule could result in applicants for status adjustment or lawful entry being denied at higher rates based on their race or ethnicity, all else being equal. This would mean the rule had a discriminatory impact and would deprive the nation of the skills and talents of immigrants — and their children — who come to the U.S. to build a better life.

F. Rule appears to be based on erroneous assumptions about immigrants, program participation, and the economy

The proposed rule appears to be premised on the erroneous assumptions that a large share of immigrants are a drain on the U.S. economy and that immigrants who enter the United States with low income or receive benefits even for a modest period of time will typically continue to have low income, continue to receive assistance, and become a burden on native-born taxpayers — and that the contributions of their children are unimportant to the nation. (The proposed public charge definition also implies that the Administration similarly regards a sizable share of U.S.-born citizens to be “public charges” and, by extension, a drain on the economy and our communities, a troubling view.)
These assumptions are at odds with the evidence on several key points.

- Immigrants, even those who are not currently well paid, work at a high rate. They perform work that is important in their communities and in the economy. Immigrants who sometimes receive the government assistance programs listed in the proposed rule work at a high rate. Many immigrants with important jobs would be excluded from the country under the proposed public charge rule.
- The degree of immigrants’ contributions to the economy is not always evident from their earnings alone. For example, they help labor markets adjust faster to local labor shortages and surpluses due to their greater willingness to move from place to place.
- Immigrants are the most likely candidates for generating net labor force growth in an aging population. For example, they counter the decline in the ratio of workers to dependents. And, as working families, they increase demand for housing and consumer durables, which are a significant component of overall demand for goods and services.
- Immigrants’ children tend to be highly upwardly mobile, completing far more education than their parents and acquiring an occupational profile similar to other Americans. When we keep out individuals seeking to reunify with family and build a life in the United States, we lose not only their contributions, but those of their children who, like the children of immigrants for generations, help build communities and companies alike.
- On average, new immigrants and their children can be expected to strongly contribute to the economy and be net contributors to consolidated federal, state, and local government finances. This is true for immigrants in general and for the types of immigrants likely to be excluded under the proposed public charge rule.
- Immigration officials would be unable to accurately identify only those individuals who, along with their children, will not be net economic contributors. Officials required to attempt to do so would almost inevitably exclude many individual net contributors, and would be at high risk of selecting a group that are net contributors in the aggregate. And, as discussed above, if given the impossible task of accurately identifying future benefit participants, immigration officials may head down unacceptable paths, such as conscious or unconscious racial profiling.

Evidence on each of these points follows.

1. Immigrants, even those who are not currently well paid, work at a high rate

In 2017, the labor force participation rate of foreign-born adults was 66.0 percent, which is higher than the 62.2 percent rate for the native born, according to the U.S. Bureau of Labor Statistics. Some 26.3 million foreign-born adults (63.3 percent of all foreign-born adults) were employed that year, compared with 59.5 percent of the native-born.⁶

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2. Immigrants perform work that is important to their communities and in the economy

While in any given year, the number of individuals who are seeking status adjustment or lawful entry and are subject to a public charge determination is modest compared to the size of the labor market, the proposed rule, if finalized, would become permanent policy and would appear to have the effect of significantly reducing the number of individuals granted status adjustment or lawful entry. Thus, the impact on the nation’s labor force would grow over time, and the impact in certain industries and occupations would appear to be significant (as discussed in Section VI.C., the rule itself lacks any estimates of the projected impact on applications for adjustment or lawful entry in a single year, let alone over time). A significant number of immigrants in the U.S. (naturalized or otherwise) came to this country through a process that included a public charge determination.

Given this cumulative effect, it is instructive to look at the extent to which immigrant workers play a role in certain industries and occupations and, in particular, the extent to which immigrants without a college degree — presumably a prime target of the proposed rule — fill these jobs. In many occupations and industries, such immigrants make up a large and disproportionate share of the workforce.

In March 2018, according to our own analysis of the Census Bureau’s Current Population Survey public use microdata sample, immigrants with less than a four-year college degree made up 10 percent of all persons (and 11 percent of all U.S. workers) but:

- 36 percent of workers in farming, fishing, and forestry occupations;
- 36 percent of workers in building and grounds cleaning and maintenance occupations;
- 29 percent of textile and apparel manufacturing industry workers;
- 27 percent of food manufacturing industry workers;
- 27 percent of accommodation industry (e.g., hotel) workers;
- 24 percent of construction industry workers;
- 24 percent of administrative and support services industry workers; and
- 21 percent of home health care industry workers.\(^7\)

Although not necessarily high-paying, these are important jobs. They provide needed services, many of which are necessary for native-born workers to hold better-paying jobs. To cite just two examples, well-paid white-collar workers typically rely on construction workers to build — and building maintenance workers to maintain — the buildings they work in.

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\(^7\) Center on Budget and Policy Priorities analysis of the Census Bureau’s March 2018 Current Population Survey public use microdata sample for detailed occupation group, detailed industry group, and exact industry, among workers employed in the week preceding the survey.
As a 2015 National Academy of Sciences panel of experts noted:

The high employment levels for the least educated immigrants indicate that employer demand for low-skilled labor remains high. There are still many jobs in the United States for low-skilled workers (Lockard and Wolf, 2012). Among the important reasons cited for this high demand have been the substantial shrinkage since 1990 of the U.S.-born, younger, less-skilled working-age population (those who are native born, ages 25-44, and with educational attainment of a high school diploma or less), owing to the aging of Baby Boomers; higher educational attainment among the U.S.-born; and a fertility rate below the replacement rate for the U.S.-born (Alba, 2009; Bean et. al., 2011; Bean et al., 2015). In other words, immigrants appear to be taking low-skilled jobs that natives are either not available or unwilling to take.\(^8\) (Emphasis added.)

3. Immigrants have been found to contribute to the economy to a degree not evident from their earnings alone

Immigrants contribute in additional ways not captured in their wages. They tend to be unusually mobile workers, quicker than their native-born peers to move around the country in response to shortages that appear in local labor markets. This helps native-born workers by filling gaps that could otherwise make their jobs impossible or reduce their productivity and lower their wages. As Harvard's George Borjas has written, “immigration improves labor market efficiency. Moreover, it turns out that part of this efficiency gain accrues to natives, suggesting that existing estimates of the benefits from immigration may be ignoring a potentially important source of these benefits” of immigration to native-born workers. The effect is not small. “Back-of-the-envelope” calculations suggest efficiency gains for native-born workers of “between $5 billion and $10 billion annually,” Borjas writes, noting that “the estimates of the efficiency gain roughly double the measured benefits from immigration.”\(^9\) Other researchers have reached similar conclusions.\(^10\) Professor Borjas is not known for exaggerating the economic benefits of immigration, and we urge you to read this study carefully and consider the findings as you consider the true costs and benefits of this proposed rule and whether the policy approach is sound.

Immigrants also lower the price of a variety of services in the community. A 2008 study found that a 10 percent increase in the share of low-skilled immigrants in a city’s labor force reduces local prices for immigrant-intensive services, such as gardening, housekeeping, babysitting, and dry cleaning, by approximately 2 percent, at current levels of immigration. The magnitude of the effect suggests that the immigration wave of the 1980-2000 period decreased the prices of immigrant-intensive services by approximately 8 percent.\(^11\)

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intensive services in an average city by at least 9 to 11 percent.\textsuperscript{11} This in turn can facilitate employment for native-born workers: the same immigration wave increased by close to 20 minutes a week the amount of time women in the top quartile of the wage distribution devoted to paid work, a later study found.\textsuperscript{12}

Immigration also drives growth in a number of industries. In the housing industry, for example, slowing growth rates in the U.S.-born population mean that immigrant households make up a rising share of total growth in U.S. occupied housing. Immigrants accounted for 8.7 percent of total growth in households the 1970s, 15.7 percent in the 1980s, and 31.9 percent — or nearly one-third — in the 1990s.\textsuperscript{13}

Although immigrants are sometimes blamed for “stealing jobs” from native-born workers in communities to which they move in large numbers, a number of researchers have recently concluded that this is not the case. A 2015 study by Gihoon Hong of Indiana University and John McLaren of the University of Virginia finds that “Each immigrant creates 1.2 local jobs for local workers, most of them going to native workers.”\textsuperscript{14} The authors explain that, unlike some previous studies, their study takes into account immigrants’ impact on increasing local consumer demand by increasing the variety of services available in the community and attracting native-born workers and consumers from outside the area. “For this reason, immigrants can raise native workers’ real wages, and each immigrant could create more than one job.” Taken together, these effects mean that local real wages can rise as a result of immigration. They then test this model on decennial U.S. census data from 1980 to 2000. A 1-percent increase in local population due to immigration is projected to increase total employment by an amount equal to between 1.2 percent and 3.5 percent of the initial population, depending on the measure used, and to increase native employment by between 0.9 and 2.5 percent. “Overall, it appears that local workers benefit from the arrival of more immigrants,” the study concludes. We urge you to read this study carefully.

While some studies (often based on strong assumptions and theoretical models) have asserted that low-skilled wages result in significant wage loss for less-educated native-born workers, “Overall, evidence that immigrants have harmed the opportunities of less educated natives is scant,” according to economist David Card (2005).\textsuperscript{15}

Economic theory recognizes that the value of an infusion of new workers into the economy is not captured in those workers’ wages alone. According to a consensus report of the National Academy

\begin{itemize}
  \item \textsuperscript{12} P. Cortés and J. Tessada, “Low-skilled immigration and the labor supply of highly skilled women,” \textit{American Economic Journal: Applied Economics} 3(3) (2011), pages 88-123.
\end{itemize}
Finally, a common claim is that, whatever good they do for the economy, immigrants drive up crime. But studies find the opposite, with significantly lower incarceration rates for immigrants than natives. Exploring the reasons for this large — and growing — gap, economists Kristin F. Butcher and Anne Morrison Piehl also conclude that the reason is not selective deportation of criminals: “deportation does not drive the results. Rather, the process of migration selects individuals who either have lower criminal propensities or are more responsive to deterrent effects than the average native.”

4. Immigrants help counter the effects of the aging population

Immigrants bolster a national birth rate that, among the native-born population, has recently dropped to historically low levels. A low birth rate can lead to a decline in the labor force, reduced demand in growth-driven industries such as housing (and reduced home prices due to weaker demand), and a slowing and less dynamic economy. Immigrants, however, can counteract these effects.

Moreover, a low birth rate combined with the aging of the Baby Boom generation means that immigrants are vital to helping us improve our ratio of workers to retirees and support the Baby Boom population, including the native-born population, in its retirement years. As the 2017 NAS report notes, “The vast majority of current and future net workforce growth — which, at less than 1 percent annually, is very slow by historical standards — will be accounted for by immigrants and their U.S.-born descendants.”

This is particularly important now, given our current demographic realities. The retirement of the Baby Boom generation represents an economic and fiscal challenge; by 2035, the Census Bureau projects, there will be only about 2.4 working-age adults in the United States for each elderly person age 65 or older, fewer than in any prior decade on record and down from 4.7 working-age adults in 2016. The ratio of working-age adults (ages 18 to 64) to children and elderly combined is expected to fall from 1.6 to 1.3 between 2016 and 2030 and then remain level at 1.3 until at least 2060. Thus, adding younger workers now can ease this demographic shift.

18 NAS 2017, page 50
Without immigrants, there would be fewer working-age adults and workers, and they would make up a smaller proportion of the total population. As the Census Bureau notes:

Today, about 78 percent of the foreign-born population is of working age, between 18 and 64 years, compared with just 59 percent of the native born. Both of these figures are projected to fall within the next decade, but the gap will remain almost as large (falling to 72 percent and 56 percent, respectively, by 2030). This gap is important because the foreign born are more likely to be in the labor force. What is more, young first-generation immigrants [that is, the foreign born] are more likely to have full-time jobs than their native peers.21

Immigration, if not reduced, is thus likely to help the United States avoid the more severe demographic strains affecting Europe, observes the Pew Research Center. Although “one-in five U.S. residents are expected to be 65 and older by mid-century, greater than the share of seniors in the population of Florida today,” Pew notes, America is not aging as rapidly as European nations — an advantage over Europe that is chiefly attributable to America’s higher rate of immigration:

The Pew Research Center estimates that, from 1960 to 2005, immigrants and their descendants accounted for 51% of the increase in the U.S. population. Looking ahead, from 2005 to 2050, immigrants and their descendants are projected to contribute 82% of the total increase in the U.S. population. Without immigration, U.S. population growth from 2005 to 2050 would be only 8.5%, more on par with that of European nations.22

We urge you to read the Pew analysis carefully.

Partly for this reason, increases in immigration improve the health of the Social Security trust funds. The program’s trustees estimate that increasing average annual net immigration by 100,000 persons improves Social Security’s long-range actuarial balance by .08 percent of taxable payroll.23 Increasing immigration now will also improve the actuarial balance in Medicare over the next several decades, an important timeframe given the near-term need to shore up the program’s finances and the difficulty of accurately estimating Medicare costs over a longer time horizon.

Nothing in the analysis of the rule presented by DHS suggests that the age distribution of those likely to be denied status adjustment or entry by the provisions in the proposed rule is likely to be significantly different than the age distribution of immigrants overall. Indeed, the rule may well target younger immigrants — both children and working-age adults — to a larger degree than the immigrant population overall. Ironically, the rule specifically indicates that being a child should be considered a negative factor in a newly prescriptive test designed to increase adjustment and entry denials, despite the fact that the U.S. needs more young people to counterbalance an aging U.S.-born

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population. If the agency believes the age distribution to be significantly different, that information should have been presented in the proposed rule and taken into account in the analysis of likely effects of the rule.

5. Immigrants who sometimes participate in the government assistance programs listed in the proposed rule work at a high rate

Longitudinal data powerfully illustrate the fallacy in presuming that future program participants will remain predominantly dependent on government support. To assess long-term patterns of assistance and employment, CBPP analyzed a sample of longitudinal survey data covering 1998-2014 from the PSID, drawn from the same sample analyzed by the Urban Institute, as described previously.24 (See Section II.B above.) In this analysis, we focused on individuals in the survey’s immigrant sample (that is, individuals in immigrant families added to the PSID in 1997-1999). We looked at young adults, ages 18-to-44 in 1999, who received any of the five programs that are both covered by the proposed rule and recorded in the PSID: Medicaid, SNAP, SSI, TANF, or housing assistance.

We find that the large majority of those who ever used benefits were also employed a majority of the time, and even more were either employed or had an employed spouse:25

• At least 93 percent were either employed in the majority of the observed years (5 or more of the 9 years observed in our PSID sample) or were married to someone who was.

• 77 percent of such immigrant program participants were themselves employed in a majority of the observed years.

• At least 87 percent were either employed themselves at the time of the final interview in 2015 or were married to someone who was.

• Fully 96 percent were themselves employed in at least one year.

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24 As previously noted, the sample used is an extract of the Panel Study of Income Dynamics created by Sara Kimberlin of the California Budget and Policy Center and Noura Insolera from the PSID staff of the University of Michigan Institute of Social Research. It contains 77,223 individuals interviewed in odd-numbered years from 1999 and 2015. The analysis shown here contains 286 unweighted sample adults from the PSID immigrant supplement, a sample of 511 post-1968 immigrant families added to the PSID in 1997-1999, weighted with the survey’s person-level panel weights. As previously noted, the sample extract includes data regarding Medicaid participation at the time of the interview; SNAP participation in the two calendar years preceding each interview; and participation in AFDC, SSI, and housing assistance in the prior calendar year. Medicaid, AFDC, and SSI participation are measured at the individual level, SNAP and housing assistance at the family level. Two assistance programs covered by the proposed rule, state General Assistance and Medicare Part D Low Income Subsidies, are not available in the extract. A small number of survey participants in this extract leave the sample and later return so are present for fewer than 9 interviews. If these were excluded, the share who work or are known to be married to someone who works would rise slightly from 93 percent to 94 percent.

25 Figures that include spouses’ employment are lower bounds because, due to data limitations, they include spouses’ employment only if one member of the married couple is the household head. The figures exclude spouses of a couple that lives, for example, in their parents’ home or in the home of a non-relative.
The first fact, in particular, bears restating. Looking at young adult immigrants (under age 45 in the survey’s immigrant sample) in 1999, most of those who would go on to receive benefits – at least 93 percent – would also be employed most of the time or married to someone who was.

This finding – that over a period of several years most immigrants who receive the listed forms of assistance are usually working or are married to a worker – reflects both the frequently temporary nature of program participation and the frequent overlap between assistance and work within any given year. Annual survey data confirm that the majority of working-age adult immigrants who participate in the listed programs work at some point even in the same year they receive benefits or are married to a worker. (Specifically, a CBPP analysis of data from the March 2018 Current Population Survey finds that, among the 8.4 million immigrants ages 18 to 64 who participated in Medicaid, SNAP, rental subsidies, SSI, TANF, or state General Assistance at any point in 2017, 68 percent worked during that same calendar year or were married to a worker. Fully 5.2 million or 62 percent worked themselves. Those workers worked an average of 37 hours per week and 46 weeks per year. Their median estimated wage, based on annual earnings divided by weeks worked and usual hours worked per week, was $12.50 an hour.)

These data show a major flaw in the proposed rule. Because of the turbulent nature of the labor market, illness, or bad luck, many immigrants (as well as many citizens) will sometimes need assistance for varying periods. Even if it were possible to identify future participants in the listed programs, it would be incorrect to assume that these individuals will not contribute to the economy or be largely reliant on assistance programs. Moreover, if these individuals are kept out or removed from the country, we will all lose out on their contributions and U.S. families will be worse off.

6. Many immigrants with important jobs could be excluded under the proposed rule

In many of the low-wage jobs worked by immigrants, at least occasional participation in the listed programs is common.

For example, among immigrants employed in the agriculture industry, 36 percent participated in one of the six listed programs in the previous calendar year. So did 27 percent of those in the food manufacturing industry, 29 percent of those in administrative and support services industries, 22 percent of those in construction, and 30 percent of those in building and grounds maintenance and cleaning occupations, according to our analysis of recent Census Bureau data.

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26 This analysis omits the Medicare Part D Low Income Subsidy program because the March CPS does not ask about it.

27 Source: Center on Budget and Policy Priorities analysis of public use data from the March 2018 Current Population Survey Annual Social and Economic Supplement. Benefit participation is defined as receiving family-level TANF or state General Assistance income (FPAW_VAL+F_MV_FS>0), individual-level SSI or Medicaid (SSI_YN or MCAID = 1), or household-level rent subsidies (HPUBLIC or HLORENT = 1). The analysis is based on an unweighted sample size of more than 4,600 immigrant program participants.

28 Source: Center on Budget and Policy Priorities analysis of public use data from the March 2016-2018 Current Population Survey Annual Social and Economic Supplement. Three years of data are averaged to improve statistical reliability (denominators for all percentages include greater than 200 unweighted observations). Benefit participation is defined as receiving family-level TANF or state General Assistance income (FPAW_VAL+F_MV_FS>0), individual-level SSI or Medicaid (SSI_YN or MCAID = 1), or household-level rent subsidies (HPUBLIC or HLORENT = 1)
While a smaller share of individuals seeking status adjustment or lawful entry will be current or recent recipients of these programs, the intent of the rule is to deny status adjustment or entry to all applicants who are determined likely to receive one of the listed benefits at some point in the future. This suggests that, if immigration officials had perfect predictive ability, the rule would deny adjustment and entry to a very large share of immigrants who work in these industries.

7. Immigrants’ children tend to be highly upwardly mobile

By casting such a broad net for immigrants who should be denied status adjustment or lawful entry, the proposed rule appears to presume both that immigrants themselves contribute little to the economy — which, as the data above indicate, is untrue — and that the nation would be better off without their offspring, as well. Yet when immigrants’ children are considered, the economic case for this rule is even harder to support.

Studies have long found that the children of immigrants tend to attain more education, have higher earnings, and work in higher-paying occupations than their parents. Economist David Card observed in 2005 that “Even children of the least-educated immigrant origin groups have closed most of the education gap with the children of natives.”

The National Academy of Sciences’ 2015 immigration study similarly concludes:

- Second-generation members of most contemporary ethno-racial immigrant groups (that is, children of the foreign born) meet or exceed the schooling level of the general population of later generations of native-born Americans (page 3).
- Second and later generations are generally acquiring English at roughly the same rates as their historical predecessors, with English monolingualism usually occurring within three generations. Acquisition of English is slightly slower among Spanish-speaking immigrants but even in the large Spanish-speaking population in Southern California, Mexican Americans’ transition to English dominance is all but complete by the third generation (page 6).
- The nation’s dependence on the contributions of immigrants is likely to grow as the baby boomer generation retires from the work force (page 283).

Even for immigrants without a high school education, the overwhelming majority of their children acquire a high school education. According to the National Academy of Sciences 2017 report, 36 percent of new immigrants lacked a high school education in 1994-1996; two decades later, only 8 percent of second-generation children (i.e., children of the foreign born) lacked a high-school education. [Table 8-5]

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8. On net, each additional new immigrant and his or her children can be expected to strongly contribute to the economy and be a net contributor to government finances.

From the American taxpayer’s perspective, immigration overall pays off, a National Academy of Sciences study has determined. This appears to be true even for immigrants at the education levels that characterize participants in the listed programs.

The most authoritative and recent estimates of the impact of immigration on government finances — the “fiscal impact,” or taxpayer perspective — are from the exhaustive 2017 NAS report, *The Economic and Fiscal Consequences of Immigration*. That report explores multiple alternative estimation methods and determines that “under the CBO Long-term Budget Outlook scenario, the total fiscal impact of a new immigrant who most resembles recent immigrants in terms of average age and education creates a positive fiscal balance flow to all levels of government with an NPV [net present value] of $259,000” over 75 years, including $173,000 from the immigrant and $85,000 from their descendants.

These particular findings rely on the assumption that the arrival of immigrants does not add to the cost of national defense and other “pure public” goods. This assumption is appropriate. A pure public good by definition is one whose availability does not change when consumed by some of the population, as the NAS report notes, therefore, it is clearly more plausible to presume that such costs do not increase when new immigrants arrive than that they increase in proportion to the change in total population. The NAS report observes that some analysts believe that such costs increase to some degree when the amount of immigration is large. The report therefore provides alternative estimates that include such costs allocated on a per capita basis; these, however, serve as an upper bound to the marginal costs of even a large influx of immigrants.

We request that you read the panel’s report carefully in its entirety, including Chapters 7 through 9, in order to understand those and other choices underlying the alternative NAS cost projections.

9. Immigrants with only a high school diploma are net contributors

The 2017 NAS report’s findings vary by education level. For immigrants with only a high school degree, the fiscal impact is a positive contribution of $49,000, compared with $259,000 for all education groups together (see Table 8-12 of the NAS panel’s report). A high school education is common for immigrants who ever participate in the programs listed in the proposed rule. According to our own analysis of the latest Census Bureau data from the March 2018 Current Population Survey, the modal and median recent immigrant who arrived between 2010 and 2018 and who reports receiving benefits listed in the proposed rule (TANF, GA, SSI, SNAP, housing assistance, or Medicaid) had exactly a high school degree. Among recent immigrants (ages 25 and older, who arrived in the U.S. between 2010 and 2018) who received any of the listed benefits during the year, 27 percent had no high school education, 30 percent had only a high school degree, 15

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32 Ibid., page 434.

33 Ibid., footnote 4 on page 8.
percent had some college but no bachelor’s degree, 20 percent had exactly a bachelor’s degree, and 8 percent had more than a bachelor’s degree, according to our analysis.

10. Immigration officials won’t be able to accurately identify only those individuals who, along with their children, will not be net economic contributors

One of the premises of the proposed rule appears to be that immigration officials, with a reasonable degree of accuracy, would be able to predict which individuals seeking entry or status adjustment will receive a benefit at some point in the future and that accurately predicting future benefit receipt and keeping out or removing such individuals from the United States would be a net positive for the economy and government budgets over the long run.

This premise suffers from multiple flaws.

First, immigration officials would not be able to accurately determine who will receive assistance and, in particular, who would receive significant amounts of benefits over long periods of time. Most individuals facing a public charge determination will not be current benefit recipients. Based on very little information, immigration officials would have to make predictions — guesses, really — about whether an individual will or won’t receive benefits at some point over the coming decades. They would guess wrong frequently; they might exclude an individual who has little education but can find good work in the construction industry while approving entry or adjustment to someone with a college degree who struggles in his or her new community. And, some immigration officials might decide that, given the realities of business cycles in the U.S., virtually anyone could need assistance during an economic downturn, and use the public charge determination process to keep out or deny status adjustment to almost anyone.

Second, many of those excluded — including those who ultimately do receive some benefits and those who never do — would, indeed, be net contributors to the country’s economy and public finances, particularly when their children’s contributions are considered. Suppose an immigration official simply denied entry or status adjustment to anyone who does not have more than a high school degree; the NAS study shows that those with high school degrees are net fiscal contributors (though they will have higher benefit receipt on average than college graduates).

Third, lacking a reasonable basis for predicting future benefit participation on an individualized basis, immigration officials might be tempted to ground their decisions on unjustified and unacceptable forms of discrimination. For example, immigration officials might consciously or unconsciously base decisions on race or country of origin, thus engaging in racial or religious profiling. They might reason that people of color in the U.S. have higher rates of poverty and benefit receipt than white people and approach the public charge determination of individuals from certain countries or racial backgrounds differently from similarly situated individuals who are white. Even seemingly objective or merit-based criteria such as educational attainment may reflect little more than prejudices in the country of origin; for example, a person’s lack of education may reflect their country’s discrimination against women rather than talent or ability.

The United States remains a country with a dynamic economy and opportunity for upward mobility, educational attainment, creativity, and entrepreneurship. Given the inevitable inaccuracies in immigration officials’ predictive capabilities, removing individuals or keeping them out of the
country based on an extremely broad definition of “public charge” would cost the U.S. many needed workers, including those who care for seniors and clean our offices as well as those who start businesses, go to college, and have children who go on to be everything from teachers to inventors to business leaders. Losing this talent would weaken the entire nation.

G. Unworkable bond proposal would not provide reasonable opportunities for entry or adjustment of status to those deemed inadmissible on public charge grounds

Because of the proposed rule’s vast expansion of inadmissibility based on a determination that an individual is likely to become a public charge, a significantly larger group of individuals could be denied entry into the country or adjustment of status on public charge grounds. As a result, there could be a substantial increase in the number of immigrants who, if otherwise inadmissible due to a public charge determination, would seek to be granted entry or adjustment of status based on the posting of a public charge surety bond, as authorized by law. Public charge bonds rarely have been used since the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made the Affidavit of Support enforceable. In practice, these Affidavits of Support have provided sufficient assurance that an individual will not become a public charge, generally obviating the need for public charge bonds.

Among the changes proposed by DHS is how Affidavits of Support would be considered in an admissibility decision. DHS proposes that, for those immigrants required to submit an Affidavit of Support, a sufficient Affidavit is not necessarily sufficient for admissibility. This is a change from current policy and practice. Instead, a sufficient Affidavit of Support would become a positive factor in the totality of the circumstances test, to be weighed along with other factors and considerations. One result of this change would be that posting of a public charge surety bond would become the only way an individual could overcome a determination that they are likely to become a public charge, but the bond requirements in the proposed rule are likely to foreclose this as a viable option, particularly for those immigrants without significant assets.

Posting a public charge bond is a statutorily authorized mechanism through which an immigrant who would be deemed inadmissible on public charge grounds may nonetheless be admitted. (See, INA, sec. 213, 8 U.S.C. 1183.) The proposed rule changes, which would significantly restrict the availability of public charge bonds and impose an unreasonable and arbitrary cost on using a bond, are generally unworkable. Taken as a whole, the changes related to bonds mean that they would be unlikely to offer a pathway of admission to very many individuals; instead those changes would add to the proposed rule’s overall impact — namely, to severely restrict individuals’ ability to enter or remain in the United States, particularly those of modest means and those from poorer nations. DHS invites comments on any aspect of its proposed rule changes on the public charge bond process (83 Fed. Reg. 51220). We oppose the restrictive and onerous DHS proposal for public charge bond changes.

The proposed rule limits the circumstances under which a bond might be offered. Under the proposed rule, an individual cannot seek to provide a public charge bond; instead, he or she can only do so if DHS exercises its discretion to allow a bond. The proposed rule constrains DHS’s discretion by generally not allowing a bond if the individual has one or more heavily weighed negative factors, such as receipt of a public benefit within the prior three years or inability to demonstrate current, recent, or reasonable prospective employment. Thus, at the outset, many
individuals would not have an option of using a bond, barred either by a DHS official’s discretionary decision not to allow a bond or by the rule’s limiting of the official’s discretion to offer a bond.

Moreover, even those who might be offered the option to use a bond may well find the cost prohibitive, including the cost of posting and maintaining the bond as well as the consequences of public benefit receipt. The rule sets the minimum bond amount at $10,000, and an official could require an even higher amount at their discretion; the rule allows no appeal of the amount at which the bond is set. Even using a surety, these are prohibitive amounts for many. A surety company likely would require collateral to secure the bond (surety companies often require collateral for immigration-related bonds), and those who are deemed otherwise inadmissible on the public charge basis are unlikely to have access to collateral to support a bond of $10,000 or greater.

The proposed rule adds a high risk of forfeiture in light of the broadened scope of benefits considered and the minimal amount of benefit receipt that triggers breach of the bond. Federal rules at 8 CFR 103.6 (which the proposed rule would not change) require that there be a “substantial violation” to be considered breach of the bond, and DHS unreasonably proposes to interpret this term so that any receipt of public benefits (in excess of the thresholds set forth in section 212.21) would constitute breach of the bond, requiring forfeiture of the entire amount. Prior procedures looked at the extent of the benefit receipt, requiring repayment in that amount. Under the proposed rule, an immigrant might receive a modest amount of public benefits due to an unforeseen and exigent circumstance beyond the immigrant’s control — such as loss of a job or need for care for a temporary medical condition — and be required to forfeit an entire $10,000 (or greater) bond. This penalty is vastly disproportionate to the triggering benefit amount and is irrational, arbitrary, and capricious. Contrary to the preamble statement at 83 Fed. Reg. 51225, this breach definition is not a reasonable incorporation of the “substantial violation” concept.

It is also problematic for a substantial bond to come due if the amount of benefits received is more significant but those benefits have become necessary for reasons outside the individual’s control. With the scope of benefits in the public charge definition so substantially expanded under the proposed rule, the type of circumstances — a serious health condition or car accident that necessitates Medicaid benefits, for example, or a broad-scale recession during which someone needs SNAP — that would trigger forfeiture is far broader than under the current public charge definition and is highly problematic.

Forfeiture of a bond when an individual receives benefits that become necessary could lead to real harm. Consider a person who has posted a bond and worked steadily for four years, becomes ill with a serious condition such as cancer or is involved in a serious car accident, and temporarily is unable to work and requires extensive medical care. Congress has made this individual eligible for Medicaid, but if she accesses care, she will forfeit a $10,000 bond at a time when she is facing a serious financial and health crisis. This individual will have worked and paid taxes up until this crisis and, if medical care results in a positive health outcome, will again work and contribute taxes. This does not further the broadly shared values of assisting those in times of crisis and recognizing that all future risks cannot be foreseen and prevented.

The very large financial penalty facing individuals with a bond who then receive benefits such as Medicaid or SNAP, even in crisis situations, would likely lead individuals to forgo assistance, even in dire circumstances. This could have very large, negative effects, shift costs to medical providers and community groups, and increase serious hardship, including among children who may themselves
have a bond or whose parents may have a bond. Hardship would not be limited to non-citizens; many with bonds will live in families with U.S. citizens, including U.S. citizen children.

As noted, bonds can be posted today to overcome a public charge determination, but they are rarely used. Moreover, today bonds would be used to insure against receipt of a much more limited set of benefits — government cash assistance or long-term institutional care — and thus would be less likely to be forfeited and less expensive for those with bonds. Overall, the proposed rule serves to foreclose use of bonds rather than to implement the statutory mandate that an immigrant may post a public charge bond. The proposed rule is an unreasonable and impermissible interpretation of the scope of authority granted to the agency under the statute. The proposed rule would further limit, rather than offer an additional pathway to, opportunities for immigrants to enter or remain in the country.

DHS has done little to justify its bond-related proposals. The sections of the NPRM that set out “costs and benefits” of the proposed rule fail to provide adequate evaluation of the impacts of the proposed regime, such as the degree to which these bonds would be used, the cost to individuals posting the bonds, how many individuals would have to forfeit their bonds, and the harm caused when those with bonds forgo needed assistance even in crisis situations. These analytic deficiencies are discussed in more detail in Section VI.H.

H. Proposed scheme distorts the “totality of circumstance” test

The proposed rule sets forth a scheme for applying the longstanding “totality of circumstances” test in a manner that reshapes, with no statutory basis, how the agency will determine whether an individual is likely to become a public charge. The proposed totality of circumstances framework, along with the proposed rule’s expanded definition of public charge, aim to accomplish — without congressional action — a rewrite of our immigration policy to keep out those who are not already affluent, effectively closing our nation’s doors to those from poorer nations, including many people of color.

In 1996, Congress codified longstanding caselaw and policy setting forth five factors of a public charge determination: age; health; family status; assets, resources, and financial status; and education and skills. The statute also authorizes consideration of an Affidavit of Support as part of the determination.

Under the rubric of these five factors, the proposed rule adds new tests — most notably a 125 percent of federal poverty guidelines income test — skewing determinations against those with limited financial resources. As illustrated in Table 33 of the NPRM (p. 51211-5), the revised totality of circumstances framework effectively expands these five factors into a larger list of 22 considerations and attaches a negative or positive value to each consideration. The proposed scheme places half of these considerations under just one of the five factors: assets, resources and financial status. In so doing, DHS attaches greater weight to the financial factor, essentially giving this factor as much weight as the other four factors combined and thereby undermining and distorting the statutory approach to the totality of circumstances test.

The redesigned totality of circumstances test, which would look at whether the positive considerations outweigh the negative ones or vice versa, would thus become skewed against
individuals without significant assets or income. It would essentially multiply this single statutory factor and create more opportunities for negative findings related to income or assets, even though some of these financial considerations are highly correlated to each other rather than representing different aspects of an immigrant’s circumstances.

The rule also attaches a heavily weighed negative or positive value to selected circumstances, particularly those related to financial circumstances. The introduction of heavily weighed elements within the scheme, also without statutory basis, is an additional way in which the proposed framework places outsized emphasis on current financial circumstances. Taken as a whole, the scheme’s emphasis on considerations related to the financial factor would likely mean that individuals who are from poorer countries or have modest means but also have talents and drive will be denied entry or adjustment of status, and that the United States’ doors will remain open only to those with assets or income.

The new 125 percent of the federal poverty guidelines test is particularly problematic. Many individuals — particularly those from poorer countries — would “fail” this factor, despite the fact that it is a highly imperfect measure of how an individual will fare as s/he makes a new life in the United States. (See Section II.D. above.) Because it is bright-line test, the 125 percent consideration could play an outsized role and would likely be accorded significant weight in practice, even though it is not heavily weighed in the rule. We do not think that there should be any standard income criteria set in the rule, as such standards undercut the totality of circumstances test and disadvantage those from poorer countries who will be able to find jobs in the U.S. Therefore, we oppose both the proposal to consider whether income is under 125 percent of poverty negatively and the proposal to consider and heavily weigh income over 250 percent of poverty positively.

The proposed scheme places too high an emphasis on financial status, particularly with the 125 percent of poverty income test. Had such a test been in place over the past 100 years, countless immigrants who went on to succeed in the U.S. and raise children who succeeded would have been kept out or forced out.

Another troubling consideration is seeking a credit score. At FR 51189, the Department invites comments on how to use credit scores. Using credit reports and credit scores to determine public charge status is inappropriate because many individuals seeking status adjustment or lawful entry will not have a credit history, particularly individuals who have been in the U.S. for a short period or are applying for entry from a poorer country. This may be particularly true for children and for women (particularly women from poorer countries, who may be even less likely than men to have access to credit). Neither credit reports nor credit scores were designed to provide information on a consumer’s likelihood of relying on public benefits or on their character.

The proposal also wraps the Affidavit of Support into the totality of circumstances test as just another factor that would have a positive weight if the Affidavit is sufficient. (Under current and continuing policy, if a required Affidavit of Support is insufficient, the immigrant is inadmissible). Since Congress made the Affidavit of Support enforceable in 1996, it has served in public charge determinations to provide assurance that the immigrant would not become a public charge, since the sponsor is legally bound to help the immigrant if needed and to reimburse the government if benefits are received within five years. (This is also why public charge bonds have been rarely used in recent decades; see Section II.G above.) The proposed scheme effectively demotes the role of the Affidavit of Support, treating it as a single positive factor while also requiring that the immigrant...
have more positive findings than negative in the totality of the circumstances, with half of the considerations falling under the financial factor.

This demotion of the Affidavit of Support is yet another way that the re-framed totality of circumstances scheme would allow only those already with resources to enter or remain in this county. The combination of the other changes in the rule on public charge determinations and the reduced role of the Affidavit of Support would mean that many more individuals would be determined inadmissible. The remaining avenue for admission would only be a discretionary public charge bond, but, as discussed in Section II.G., that avenue too would effectively be unavailable.
III. Medicaid, Medicare Part D Low-Income Subsidies, SNAP, and Federal Rental Assistance Should Not Be Added to the Public Charge Definition

Under longstanding federal policy, a person is considered a public charge if he or she relies on cash government benefits (such as TANF or SSI) or is supported at government expense in an institutional setting (such as through Medicaid long-term care benefits), as the primary means of support. Caselaw has long held that an alien who is “incapable of earning a livelihood” could be considered a public charge. The proposed rule expands the definition of public charge so that an individual who receives housing, health, or food benefits in amounts or for durations above certain thresholds is also considered a public charge, even if the individual works and if benefit receipt is of a modest amount or duration. The proposed change equates receipt of such benefits with dependence on government as a means of support.

This proposed expansion is based in a flawed analysis of who receives food, health, and housing benefits and the role that these benefits play in supplementing earnings of many recipients who primarily meet their needs through their own capabilities and efforts, as reflected in their earnings. These benefits do not provide the means of support in the manner that cash benefits or institutionalized long-term care benefits purport to do. Instead, they provide important yet supplemental help for recipients, many of whom generally support their families with earnings that are low enough that they may also qualify for benefits, often for relatively modest periods of time.

The benefit and eligibility details, as well as the circumstances of recipients, differ by program, and the program-by-program detail below includes background on each program and a discussion of why a recipient of each of the benefits should not be considered a public charge.34 There are common themes, however, across programs:

- Many of those who receive benefits from these programs are workers who primarily meet their needs through their own capabilities and efforts. Individuals or families with earnings at levels well above the federal poverty guidelines may qualify for housing, health, or food benefits. These include individuals who work at important but low-paid jobs as well as those who may be between jobs because of the instability of the labor market or temporary circumstances of the family.

- Unlike cash assistance, these benefits are supplemental and cannot meet a family’s full basic needs. Housing and food benefits provide partial coverage of housing or food needs, not total support of all needs. Health coverage, while very important to life and ability to work, does not in itself cover the most basic living expenses.

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34 The proposed rule would also extend certain aspects of the newly defined public charge assessment to non-immigrants seeking to extend or change their status. We object to this extension. Except for very narrow circumstances, most non-immigrants would not qualify for public benefit programs identified in the proposed rule, but changes in the rule for non-immigrants would result in more confusion among immigrant families and in some cases result in eligible non-immigrants (such as pregnant women or children) forgoing needed services. such as treatment for a serious medical condition.
• Receipt of these housing, health, or food benefits can support participation in the workforce and lead to better outcomes for immigrants and their families. These benefits support not only healthier and more secure present circumstances, but a better future, particularly for children. In some cases they also help adults get back on their feet or stay healthy so they can work and contribute to the economy.

The definition of public charge should not be expanded to include receipt of benefits from the health, housing, or food programs included in the proposed rule. Such expansion is an arbitrary and unreasonable distortion of longstanding public charge law from a decades-long standard on what constitutes a public charge — a standard that Congress has chosen not to change.

Nor should any other benefit programs be added to the definition of public charge. At 83 FR 51173, the Department asks about unenumerated benefits, both whether additional programs should explicitly be counted and whether use of other benefits should be considered in the totality of circumstances. The answer is no. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider; counting them will harm millions of immigrant families and their communities.

The expansion of the definition goes far beyond the inclusion of a broader set of benefits. This is because most individuals determined to fail the public charge test would likely be individuals who have never received any of these benefits but who immigration officials predict will receive a benefit at some point over the course of their lifetimes (in amounts or durations that exceed the thresholds established by the rule, which could mean receipt for part of a single year). The benefits that have been added are ones that a very large share of native-born U.S. citizens receive over the course of their lifetimes. (See, Section II (C).) During recessions, the share of individuals who receive help goes up, and over the course of someone’s lifetime, they typically live through multiple recessions (with business cycles often lasting ten or fewer years). Under the current standard, immigration officials determine whether someone is likely to receive a benefit that only a very small share of Americans receive. When the expansion of the set of programs considered — to include those received by perhaps half of all U.S.-born citizens over their lifetimes — is coupled with the long-term horizon over which potential receipt is supposed to be predicted, the resulting test would designate a very large share of native-born U.S. citizens a public charge.

A. Medicaid

Receiving Medicaid should not factor into public charge determinations as proposed in section § 212.21 (b). Medicaid is a key component of the U.S. health care system, providing quality, affordable health coverage to millions of people who would otherwise lack access to the health care services they need. Including Medicaid in the definition of public charge is a radical shift in immigration policy that would greatly limit individuals’ ability to immigrate to the United States because such a large share of the U.S. population relies on Medicaid at some point in their lives. More than a fifth of people in the United States are enrolled in Medicaid in the course of a year and a larger share are enrolled at some point in their lifetime.\(^{35}\) Considering the use of Medicaid as a factor in public

charge determinations would result in eligible people forgoing services that have proven effective in improving health outcomes, providing financial stability for families, hospitals, and other health care providers, reducing uncompensated care costs that states and localities must absorb, and improving children’s longer-term educational and earnings trajectories.

While health coverage through Medicaid plays a significant role in ensuring the well-being of families and society, Medicaid is, by definition, a supplemental benefit, except for those who receive institutional long-term care. Medicaid does not provide shelter, food, or other basic expenses of daily living. Since Medicaid beneficiaries cannot rely on the health coverage Medicaid provides to meet their basic living expenses, those who receive Medicaid for their health care should not be considered public charges.

The inclusion of Medicaid in the public charge definition would result in individuals who work in jobs that are important in our economy and communities being denied entry or status adjustment. This would hurt the nation’s economy and needlessly separate family members from each other.

Including Medicaid receipt in the definition of public charge would also result in individuals who need coverage forgoing Medicaid because they feared it would have a future negative immigration consequence, either because they might face a public charge determination in the future or because the rule engenders fear beyond those who will be subject to a public charge determination. (See Section IV.B) This means that individuals who needed health care would go without it, to the detriment of their health and ability to work, of their children’s future, and of health care providers’ finances.

These downside consequences — both the harm done from denying entry or status adjustment to a large number of individuals and the harm done as people who need care forgo Medicaid coverage — are not fully explored in the proposed rule, including in the “cost benefit analysis” section (see Section VI). This lack of analysis makes a full accounting of the rule’s likely benefits and harm impossible to adequately determine.

1. Medicaid plays a key role in ensuring a large share of the U.S. population has access to health coverage

Medicaid has a broad reach. It provided health coverage for 97 million low-income individuals during 2017, and far more people get their health coverage through Medicaid if participation is measured over longer periods of time. If receiving Medicaid makes someone a public charge — and, by extension, someone who does not “contribute” to the U.S. in a positive manner — then a very large share of American citizens are public charges.

Each month, Medicaid serves 33 million children, 27 million non-elderly, non-disabled adults (mostly in low-income working families), 6 million seniors, and 9 million people with disabilities. Medicaid plays a particularly critical role for certain populations, covering nearly half of all births in the typical state, 76 percent of poor children, 48 percent of children with special health care needs, and 45 percent of adults with disabilities. More than 2 in 5 Medicaid enrollees have family income
at or above 138 percent of the federal poverty line, with most of these enrollees having income between 138 percent and 200 percent of the poverty line.\textsuperscript{36}

Because Medicaid is used by such a large portion of the U.S. population, including it as a factor in the public charge determination could lead immigration authorities to limit entry or status adjustment only to those who have substantial wealth — a new and extreme interpretation of the public charge concept that is out of line with decades of caselaw and policy. No one can predict whether they will have heightened health needs due to the onset of cancer or other health conditions or due to an accident, and even people with the levels of resources held by most middle-class Americans can end up needing Medicaid for the health care they need when they get injured or sick. Considering whether someone might rely on Medicaid in the future would radically shift our immigration system and close the door to immigrants who would be important contributors both to our communities and our economy.

2. Medicaid eligibility varies significantly by state and immigration authorities would not be able to accurately predict whether individuals would likely qualify in the future

Medicaid is a federal-state program; it is funded jointly by the federal government and the states, and each state operates its own program within broad federal guidelines. States have numerous options as to the people and benefits they cover and a great deal of flexibility in designing and administering their programs. As a result, Medicaid eligibility and benefits vary widely from state to state.

States must cover certain “mandatory” groups, including children through age 18 in families with income below 138 percent of the federal poverty line, pregnant women with income below 138 percent of the poverty line, parents whose income is less than the state’s cash assistance eligibility limit in place prior to welfare reform, and most seniors and persons with disabilities who receive cash assistance through the Supplemental Security Income (SSI) program.

States can also cover “optional” groups, including pregnant women, children, and parents with income above limits for mandatory coverage; seniors and persons with disabilities with income below the poverty line who don’t receive SSI; and “medically needy” people — those with medical expenses that reduce their disposable income below a certain threshold, in which case Medicaid covers their expenses after they “spend down” their excess income. The Affordable Care Act (ACA) expanded Medicaid for all non-elderly adults with incomes below 138 percent of the poverty line, but a Supreme Court decision made the expansion optional for states.

Thirty-two states have expanded Medicaid coverage to low-income adults under the ACA, but eligibility levels for adults without disabilities remain low in states that have not expanded. For parents, Medicaid eligibility in non-expansion states ranges from 18 percent of the poverty line in Alabama ($2,185 annual income for a single person) to 105 percent of the poverty line in Maine ($12,750 annual income), with the average in the 18 non-expansion states at 50 percent of the

poverty line ($6,070 annual income). Wisconsin is the only non-expansion state to cover childless adults at *any income level.*

Immigration authorities would have no way of predicting which states individuals would likely live in throughout their lives and therefore would not know which income thresholds would be relevant to consider when making a public charge determination, potentially leading them to assume that most people could end up using Medicaid at some point. It would be unfair to assume that an adult immigrant may one day qualify for Medicaid because he is likely to have income of about 130 percent of the poverty line and therefore could qualify for Medicaid as an adult; yet if he lives in one of the 19 states that hasn’t yet expanded Medicaid eligibility for adults, there is no way he could qualify for Medicaid.

Inclusion of Medicaid would also result in discrimination against children and women who are of child-bearing age, as all states cover children and pregnant women up to at least 138 percent of the poverty line and generally significantly higher. Because Medicaid eligibility limits are higher for these groups, immigration officials could be far more likely to deny applications for adjustment or entry for these groups. Given the variability in eligibility based on age, gender, parental status, disability status, and state of residence, immigration authorities would likely assume that most individuals who currently have modest means would rely on Medicaid at some point in their lives.

3. Medicaid is a powerful work support

Most Medicaid beneficiaries who can work, do work. More than 60 percent of Medicaid beneficiaries are either children, adults with work-limiting disabilities, or over the age of 65 and not expected to work. Of the remaining non-elderly, non-disabled adult Medicaid beneficiaries, nearly 4 in 5 are in working families, with most of those in families where someone works full-time. Of those who aren’t working, some receive Medicaid during temporary periods of joblessness and then return to work and no longer need coverage.

Work rates are particularly high among Hispanic and Asian Medicaid beneficiaries. Medicaid beneficiaries work in a variety of major industries that serve as the backbone of the U.S. economy: 40 percent of working beneficiaries are in the agriculture or service industry; 21 percent work for education or health care systems; 18 percent work in professional services or public administration; and 14 percent work in manufacturing.

Medicaid is a vital source of health care for low-income workers, filling in the gaps for those who do not have access to affordable coverage through their employers. Working Medicaid beneficiaries are less likely to work in jobs offering affordable health insurance coverage. Some 42 percent of

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working beneficiaries work in small firms (fewer than 50 employees), as compared to only 28 percent of the overall workforce. Only 55 percent of small firms offer health coverage benefits, as compared to over 98 percent of firms with 200 or more employees. Working Medicaid beneficiaries also are more likely to receive low wages and one in three workers in the bottom quartile of the income distribution are offered employer-sponsored coverage. The expansion of Medicaid coverage to low-income adults is a critical support for low-wage workers. More than 4 in 5 working beneficiaries in Ohio’s expansion said their coverage made it easier to work, and 60 percent of unemployed beneficiaries said coverage made their job search easier. Similarly, 69 percent of working beneficiaries in Michigan’s expansion said coverage made it easier to work, and 55 percent of unemployed beneficiaries said coverage made their job search easier.

That’s not surprising, given the relationships between health care, health, and employment. When manageable health conditions like diabetes, heart disease, or depression are treated and controlled, individuals with these conditions are better able to hold down a steady job. For example, a long-term randomized trial found that providing older adults with regular care for heart disease increased their earnings, likely by reducing their time out of work due to illness. In contrast, if chronic conditions are not well-managed, work may become impossible.

In addition, many low-income adults have undiagnosed physical or mental health conditions and receive treatment only after gaining Medicaid coverage. Among Ohio Medicaid expansion enrollees, 27 percent were newly diagnosed with one or more serious physical health conditions after gaining Medicaid coverage, with many then starting treatment.

Reviewing the available evidence on health coverage, work, and health outcomes, Kaiser Family Foundation researchers conclude that “access to affordable health insurance and care, which may help people maintain or manage their health, promotes individuals’ ability to obtain and maintain

40 Rachel Garfield, Robin Rudowitz, and Anthony Damico, 2018, op.cit.
47 Ohio Department of Medicaid, 2018, op. cit.
employment.” Conversely, research shows that unmet need for health care, especially mental health or substance use treatment, impedes employment. Accessing Medicaid should not label a person a public charge because accessing Medicaid helps individuals work and contribute to the economy.

4. Medicaid helps promote children’s future success; the proposed rule would hinder coverage and harm families and children

As noted, a key impact of the rule is that many families would likely forgo participation in Medicaid and other programs out of fear that it could result in a negative immigration consequence. This chill effect would have a particularly harmful impact on children — including children who may themselves face a public charge determination as well as a much larger group of children (including U.S. citizen children) whose families fear a negative immigration consequence even though they would not face a public charge determination.

Medicaid is primarily a health coverage program, but its impact reaches beyond health, particularly for children because of Medicaid’s Early and Periodic, Screening Diagnostic and Treatment (EPSDT) program. EPSDT guarantees that children and adolescents under the age of 21 have access to a robust set of comprehensive and preventive health services, including regular well-child exams; hearing, vision, and dental screenings; and other services to treat physical, mental, and developmental illnesses and disabilities. The loss of EPSDT would be particularly harmful to children with special health care needs, as Medicaid serves as the sole source of coverage for over one-third of these children. Because of the EPSDT guarantee Medicaid plays a critical role in children’s health and long-term development. For example, Medicaid ensures that children have access to important health services that promote school readiness, such as ensuring access to well-child exams, vaccines, and other important health screenings. Children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits. Moreover, children covered by Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.

Forgoing Medicaid also would make children and their families less financially secure, as they would be at risk of going without needed medical care and incurring medical debt for any care they did receive. (See Section VI.G for more information about how the NPRM fails to fully analyze and quantify the harm done by a reduction in Medicaid enrollment among eligible individuals due to the proposed rule.)


5. Proposed rule would result in more uncompensated care and hurt health care providers and states

Hospitals rely on Medicaid revenue to pay for services that may otherwise remain unpaid, so if individuals forgo Medicaid coverage out of fear of immigration consequences, health providers can be left holding the bag. As discussed in the Section VI.G(4), this is another area where there is inadequate analysis presented in the NPRM to judge the potential implications for providers.

State budgets also benefit from more people having coverage by lowering state costs for uncompensated care and services that Medicaid covers, such as mental health care. Medicaid expansion has produced savings in Arkansas, Louisiana, Kentucky, Michigan, and elsewhere, partly because of reduced uncompensated care, research shows. As more low-income people have gained Medicaid coverage, demand for state-funded health programs that serve this population, including payments to hospitals to cover uncompensated care, has dropped, providing net savings. For example, Louisiana saved $199 million in the first fiscal year of its expansion and is projected to save an additional $350 million in the current fiscal year, in large part because of lower state payments to hospitals for uncompensated care. Colorado’s Medicaid expansion is expected to produce $134 million in net savings through 2026.

In short, including Medicaid in the set of benefits considered to make someone a public charge would deny entry and status adjustment to many hard-working individuals and children who will become workers in the future. Individuals who largely support themselves with earnings but do not have access to affordable employer-provided coverage do not fall within the common understanding of “public charge” or “primarily dependent.” The proposed rule also would cause a significant number of individuals — many of whom will never face a public charge determination — to forgo Medicaid. When individuals who will reside in the U.S. throughout their lifetimes forgo Medicaid coverage, their health and capacity to work are imperiled, their children are hurt, and uncompensated care rises.

B. Supplemental Nutrition Assistance Program (SNAP)

SNAP, the nation’s most important anti-hunger program, provides important nutritional support for millions of low-income individuals, including workers and their families that struggle to make

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ends meet due to low wages or unsteady employment. After unemployment insurance, SNAP is the most responsive federal program providing additional assistance during economic downturns.

1. Basic eligibility criteria

SNAP is available to a broad set of low-income households. SNAP eligibility rules and benefit levels are, for the most part, set at the federal level and uniform across the nation, though states have flexibility to tailor aspects of the program, such as the value of a vehicle a household may own and still qualify for benefits. Under federal rules, to qualify for SNAP benefits, a household’s gross monthly income generally must be at or below 130 percent of the poverty line, or $2,213 (about $26,600 a year) for a three-person family in fiscal year 2018. Households with an elderly or disabled member need not meet this limit. States also have an option called categorical eligibility, which allows them to raise income limits by aligning SNAP’s income limit to that of a household’s Temporary Assistance for Needy Families-funded benefit. This option allows states to elect to provide SNAP to households with gross incomes above the regular threshold, but SNAP participants who are categorically eligible for benefits generally have incomes only modestly above 130 percent of the federal poverty level because those with higher incomes are generally eligible for a $0 benefit under the benefit calculation formula. Widely used to support working families, this option capitalizes on SNAP’s role as a support for working adults in low-paying jobs, helping to stabilize and support their work efforts.

2. SNAP serves working households who contribute to the economy

The proposed rule labels those receiving SNAP even for modest periods of time as a public charge, contradicting extensive research showing that SNAP provides supplemental assistance to a large number of workers, both while they are employed in low-paying jobs and during brief periods of unemployment. Most non-disabled adults who participate in SNAP — including eligible immigrants — work in a typical month or within a year of that month. Over half of individuals who were participating in SNAP in a typical month in mid-2012 were working in that month; 74 percent worked in the year before or after that month.

Household work rates are even higher. Just over 80 percent of SNAP households with a non-disabled adult, and 87 percent of households with children and a non-disabled adult, included at least one member who worked either in a typical month while receiving SNAP or within a year of that month.

For many working-age SNAP participants, SNAP supplements their wages. Treating SNAP receipt as an indication that an individual is incapable of earning a livelihood and primarily dependent on public benefits ignores the reality that many low-wage workers who work hard in jobs that are important to our economy and communities need modest assistance to afford an adequate diet.

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In addition to limits on eligibility for some groups of immigrants, some people are not eligible for SNAP, such as strikers and many college students.

SNAP participation among non-disabled adults is often short term, but those who receive SNAP for longer periods still work most of the time. In one study, nearly two-thirds (64 percent) of the adults who participated in SNAP at some point over a roughly 3.5-year period received it for a total of less than two years. And regardless of how long these adults participated in SNAP, they worked in the majority of months in which they received SNAP assistance. Over one-third of non-disabled adults worked in every month they participated in SNAP. These individuals primarily depend on work, not benefits, to make ends meet.\(^{57}\)

3. SNAP provides important but supplemental benefits

SNAP by its very nature is supplemental. Its modest assistance provides an important nutritional boost to households that must rely on other income to meet the bulk of their basic needs, as well as some of their food needs. The benefit formula assumes families will spend 30 percent of their net income for food; SNAP supplements the family’s out-of-pocket food spending with additional resources so that the household’s total food budget can meet the cost of the Thrifty Food Plan, which is an estimate of a minimal nutritiously adequate diet. A growing body of research suggests that the Thrifty Food Plan is not sufficient, given changes to the costs of food acquisition and preparation and that many families spend more than 30 percent of their net income on food as a result.

In addition, SNAP benefits average only about $1.40 per meal, or about $126 per month per person. The average benefit does not reach the proposed rule’s 15 percent of the federal poverty guideline threshold. However, as discussed in Section III. E. below, immigration officials charged with predicting whether an individual is likely to receive benefits at some point across future decades would not be able to accurately predict receipt, and they certainly wouldn’t be able to predict the level of benefits an individual is likely to receive, which would require a detailed prediction of earnings and income levels (for each month over decades) and knowledge of the SNAP benefit calculation formula. Given the impossibility of immigration officials accurately predicting future benefit receipt above threshold levels, immigration officials instead would likely default into trying to determine whether someone is likely to receive any amount of SNAP benefits over coming decades.

SNAP benefits alone do not enable most households to purchase a minimally adequate diet. Average food expenditures exceed the average SNAP benefit by about 40 percent.\(^{58}\) Recipients do not rely on these benefits alone to support themselves.

4. SNAP benefits help participants thrive

The inclusion of SNAP receipt in the definition of public charge would have two main effects. The broader definition would be used to deny entry and status adjustment to a potentially large group of individuals, including many low-wage workers, and would result in individuals whom Congress has made eligible for SNAP forgoing nutrition assistance out of fear that it would have negative immigration consequences. The individuals likely to forgo benefits would extend well beyond those who will face a public charge determination, because the rule would ramp up fear in

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\(^{57}\) Ibid.

immigrant communities and confuse many. (See Section IV.) Those forgoing benefits are likely to include children, both immigrant children and U.S. citizen children who live in families with immigrants.

When needy individuals forgo SNAP, their households have more difficulty affording adequate food. SNAP benefits have a demonstrable impact on reducing food insecurity, or lack of consistent access to nutritious food because of limited resources. Food insecurity increases the risk of adverse health outcomes, complicates individuals’ ability to manage illness, and is linked to higher health care costs. (See Section IV.)

Early access to SNAP can improve birth outcomes and long-term health, which in turn can reduce future reliance on public benefit programs, including SNAP. Poor nutrition during childhood may harm health and earnings decades later by altering physical development and the ability to learn. Researchers compared the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s and found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birthweight babies. Prenatal exposure to SNAP may also have reduced infant mortality. Improvements in health outcomes were largest for the smallest babies.

The benefits of participating in SNAP while young last well into adulthood. Adults with access to SNAP in early childhood had significantly lower risks of obesity, high blood pressure, and other conditions related to heart disease and diabetes, with increases in educational attainment, earnings, and income and decreases in welfare use for women. Children who had access to SNAP in early childhood and whose mothers had access during their pregnancy had better health and educational outcomes than children without access. A similar study using SNAP’s county-by-county rollout in California found that the introduction of SNAP was associated with improved birth outcomes.

One study found that food insecurity among children fell by roughly a third after their families received SNAP benefits for six months. Another study found that providing SNAP benefits over the summer to families with students who received free or reduced-price meals during the school


year reduced very low food security by nearly one-third.\(^{63}\) (Very low food security among children occurs when caregivers report that children skip meals or do not eat because their family cannot afford enough food.) Children receiving SNAP are less likely than low-income non-participants to be in fair or poor health or underweight, and their families are less likely to make tradeoffs between paying for health care and paying for other basic needs, like food, housing, heating, and electricity.\(^{64}\)

Participation in SNAP by low-income households has demonstrable health benefits and reduces medical costs. Research shows that SNAP improves a number of health outcomes. Adult SNAP participants are more likely to assess their own health as excellent or very good than similar adults not participating in SNAP. The same is true for parents when assessing their child’s health. Adults who receive SNAP have fewer sick days, make fewer visits to a doctor, are less likely to forgo needed care because they cannot afford it, and are less likely to exhibit psychological distress.\(^{65}\)

**SNAP participation is also linked with lower overall health care expenditures and Medicaid and Medicare costs.** An analysis of national data on overall health care expenditures links SNAP participation to lower health care costs. On average, after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur about $1,400, or nearly 25 percent, less in medical care costs in a year, including costs paid by private or public insurance, than non-participants. The differences are even greater among adults with hypertension (nearly $2,700 less) and coronary heart disease (about $4,100 less).\(^{66}\) The importance of SNAP as an investment in children, and thus not an appropriate indicator of future dependence on public benefits, is also supported by research showing that SNAP participation can lead to improvements in reading and mathematics skills among elementary school children, especially young

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girls, and can increase the chances of graduating from high school by as much as 18 percentage points.67

Receipt of SNAP can thus support work and improve a family’s immediate and long-term prospects, decreasing the odds that the individuals will become primarily dependent on government benefits to support themselves. The proposed rule, by demonizing SNAP receipt, would lead many individuals who need help to forgo it, with the result that individuals would have poorer nutritional outcomes and children’s futures would be shortchanged — lowering their economic productivity and hurting the economy.

C. Federal rental assistance: Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and Public Housing

Federal rental assistance programs make housing more affordable for nearly 10 million people, including nearly 4 million children, in roughly 5 million households. Nine out of ten of these households are assisted under one of three programs that the Department of Housing and Urban Development administers: the Housing Choice Voucher, Section 8 Project-Based Rental Assistance, and Public Housing programs.68 As explained in more detail below, federal rental assistance sharply reduces homelessness and other hardships, lifts 4 million people, including 1.5 million children, out of poverty, and can help families to live in safer, less poor neighborhoods. These benefits, in turn, are closely linked to educational, developmental, and health benefits that can improve children’s chances of success over the long term.

DHS argues that an individual who receives housing assistance is a public charge: “[t]hese programs impose a significant expense upon multiple levels of government, and because these benefits relate to a basic living need (i.e., shelter), receipt of these benefits suggests a lack of self-sufficiency” (p. 51167). DHS argues that the proposed rule would reduce annual federal transfer payments by $1.5 billion (Table 52, p. 51268). For the reasons explained below, these arguments are problematic; DHS should not consider receipt of federal rental assistance as part of any public charge determination.


68 “Policy Basics: Federal Rental Assistance,” Center on Budget and Policy Priorities, https://www.cbpp.org/research/housing/policy-basics-federal-rental-assistance. About 90 percent of those receiving federal housing assistance are helped by one of three programs: Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, or Public Housing.
1. Immigration officials would be particularly unable to predict future housing assistance receipt

Unlike entitlement programs such as SNAP and Medicaid, not every household that seeks or qualifies for federal housing assistance can receive it. Only a small fraction (1 in 4) of eligible households receive housing assistance because funding has always been limited. Waiting lists for assistance are long. Most individuals seeking lawful entry or status adjustment will not be receiving housing assistance and, thus, its inclusion in the definition of public charge would likely matter primarily when immigration officials attempted to predict future benefit receipt. But given that such a small share of individuals and households eligible for housing assistance actually receive it — and that the reasons why some households receive help while similarly situated households do not depend heavily on local housing conditions, wait list sizes, and preferences — there is no basis on which to predict that someone seeking status adjustment or lawful entry is likely to receive housing benefits. It would be unreasonable for a DHS official to ever make a determination that it is more likely than not that any individual would ever receive housing assistance, no matter how meager his or her resources or potential. Therefore, it would be unreasonable to include such considerations in a public charge determination.

Even if immigration officials understood the small likelihood of future housing assistance receipt and did not deny status adjustment or entry on that basis, including housing assistance in the public charge definition would remain highly problematic. Households eligible for and selected to receive housing assistance — often households that have significant housing challenges and are at risk of homelessness — might forgo that help out of a fear that it could have negative immigration consequences. This chill would likely extend well beyond the group of households in which anyone is likely to face a public charge determination.

2. Most working-age, non-disabled adults receiving rental assistance are workers

Of the non-elderly, non-disabled households receiving federal rental assistance, about two-thirds are headed by working adults (defined as adults who are either currently working or worked in the prior year). Moreover, work rates among non-citizen housing assistance recipients are significantly higher than average: well over three-quarters of non-elderly, non-disabled households with non-citizens receiving aid reported wage income in the current year. About 40 percent of working households using federal rental assistance have wage earnings above the federal poverty line. Housing assistance supplements the earnings of working families, helping them afford more adequate housing.


71 Center on Budget and Policy Priorities analysis of HUD administrative data.

72 Mazzara and Sard, op cit.
Moreover, income eligibility limits vary greatly across states and localities, and households with significant earnings are therefore eligible for housing assistance in some communities. To receive federal rental assistance, household income may not exceed 80 percent of the local area median income. (Some programs limit initial eligibility to households at or below 50 percent of the local median, although after admission, households remain eligible if their incomes rise above this initial limit.) This limit varies greatly across communities; for a three-person household, 80 percent of area median income in 2018 is $33,850 in Washington County, MS, and $69,750 in Los Angeles, CA, for example, while the initial eligibility limits for a one-person household are $26,350 and $54,250, respectively, according to the Department of Housing and Urban Development.\textsuperscript{73}

The availability of housing assistance differs across jurisdictions as well, with some areas having significantly longer waiting lists than others.\textsuperscript{74}

The combination of different eligibility criteria across jurisdictions, different levels of access to housing assistance, and immigration officials’ inability to predict accurately where an individual is likely to live for decades into the future means that immigration officials could not make a meaningful judgment about the likelihood of housing assistance receipt.

3. Federal rental assistance provides supplemental support to address housing affordability

Rental assistance is best understood as a supplemental benefit that reduces housing costs for low-income households but does not provide support for all of an individual’s basic needs. Indeed, it does not even fully support their housing costs. It enables recipients to access rental housing generally without spending more than of 30 percent of income on housing; recipients are generally required to cover housing costs up to this 30 percent standard.\textsuperscript{75} They are meeting their needs, including a portion of their housing needs, with their income — generally earnings — rather than solely relying on housing assistance.

The typical working family receiving federal rental assistance is headed by a 38-year-old woman with two school-age children. She has an annual income of roughly $18,200, the majority of which comes from working at a low-wage job. Her housing assistance reduces the high cost of housing, but a substantial portion of her rent is covered by her own earnings.\textsuperscript{76}

While housing assistance help makes housing more affordable — and, thus, plays an important role in reducing economic hardship and promoting housing stability — a large majority of the

\textsuperscript{73}https://www.huduser.gov/portal/datasets/il.html#2018_data.


\textsuperscript{75}More specifically, the required tenant contribution is typically the higher of: (1) 30 percent of adjusted income; (2) 10 percent of gross income; or (3) the minimum rent set by the local housing agency.

households that receive rental assistance would be housed even without assistance. In fact, most are living in housing (that is, are not homeless) when they are first offered rental assistance. Housing assistance eases these families’ burdens, but they met their most basic need for shelter without assistance — evidence that housing benefits are generally supplemental and do not mean that families are primarily dependent on government.

A review of the housing circumstances of those who are eligible for federal housing assistance but do not receive it also shows that the vast majority are housed without aid. In 2015, for example, 17 million low-income renter households had housing affordability problems (that is, either they paid more than 30 percent of their income in rental costs or lived in substandard housing) and received no housing assistance, according to HUD’s analysis of American Housing Survey data. In the same year, however, fewer than 1.2 million households — about 7 percent of the unassisted low-income households with affordability problems — experienced homelessness, according to data collected by HUD. This implies that the great majority of eligible-but-unassisted households are able to secure housing, although at a cost in terms of the hardships they bear, and should not be considered dependent or a public charge.

Moreover, because the large number of eligible-but-unassisted households and the 5 million households receiving federal rental assistance are very similar in terms of income and other characteristics, it is reasonable to infer that the great majority of the latter also would not become homeless without that assistance — and should therefore be deemed self-sufficient in terms of meeting basic housing needs.

Rental housing affordability is a challenge that is endemic among households across a wide range of incomes, as it is driven by broader structural trends in the labor and housing markets across the country and the resulting growing gap between the earnings of workers in low-paid jobs and rental costs. One-half of all renter households pay housing costs that exceed 30 percent of income, including one-quarter of renter households with annual incomes between $45,000 and $75,000. While it’s true that larger shares of lower-income households have unaffordable housing costs than do renter households with moderate incomes, significant shares of families in the latter group also face affordability challenges. The spread of rental affordability problems up the income scale, and the structural factors that underlie this trend, provide further evidence that rental assistance receipt does not indicate lack of self-sufficiency.

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77 In the rigorous Housing Voucher Evaluation (also known as the Welfare-to-Work study), a study of the effects of housing vouchers on families with children eligible for TANF, researchers found that about two-thirds of study families were renting a place of their own at baseline (excluding the small share that were already in assisted housing), despite the fact that study families were significantly poorer than the average family receiving federal rental assistance. Michelle Wood et al., “Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation,” Housing Policy Debate, 19-2, 2008, pp. 367-412.


In addition, low-income housing assistance receipt tends to be temporary, and low-income households that exit assistance programs are not likely to return. HUD data indicate that the average working-age, non-disabled household that receives federal housing assistance uses it for less than three years (somewhat longer for households headed by people who are elderly or have disabilities). The chances of any household returning to a housing assistance program after exiting are likely small, in part because incomes of assisted household tend to increase over time, but also because only a small fraction of eligible households receive assistance. As a result, the total amount of aid that most assisted households receive over their lifetimes is likely small in proportion to their earnings over many years. This is another reason to reject the idea that housing assistance receipt is a meaningful indicator of a lack of self-sufficiency.

4. Federal rental assistance enables recipients to succeed and contribute to society

As noted above, including housing assistance receipt within the definition of public charge would likely to mean that some households forgo assistance for fear that it would result in a negative immigration consequence. Many of the families that chose to forgo benefits likely would not include anyone who will actually face a public charge determination, including many families with children.

Those who forgo needed assistance would be harmed.

Federal rental assistance sharply reduces homelessness and other hardships, lifts 4 million people, including 1.5 million children, out of poverty, and can help families to live in safer, less poor neighborhoods. These benefits, in turn, are closely linked to educational, developmental, and health benefits that can improve children’s chances of success over the long term.

Frequent family moves have been linked to attention and behavioral problems among preschool children. Low-income children who switch schools frequently tend to perform less well academically, are less likely to complete high school, and as adults obtain jobs with lower earnings.

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81 Mazzara and Sard, op cit.
and skill requirements. Housing instability also affects the classmates of students who move; in schools with high turnover, teachers are less able to gauge the effects of instruction, lessons become review-oriented, the pace of curriculum slows, and student achievement is substantially lower.

By allowing families to rent a unit of their choice in the private market, vouchers enable them to move to safer neighborhoods with less poverty. Children whose families move to low-poverty neighborhoods when they are young are far more likely to attend college and less likely to become single parents, and they earn significantly more as adults, research shows. Research also shows that adults who used a housing voucher to move to a less poor neighborhood are less likely to suffer from depression, psychological distress, extreme obesity, and diabetes — results that could reflect reduced stress due to lower crime and better access to public exercise space.

5. Contrary to DHS’s argument in the preamble, the proposed rule would not reduce federal housing assistance payments

DHS estimates that the rule would reduce housing assistance payments by $71 million per year. This estimate, like all of the estimates related to the number of people likely to forgo assistance because of the rule, is highly problematic. (See Section VI.F.) But beyond the issue of how many households would forgo rental assistance, the DHS assertion of federal savings in housing programs is incorrect because HUD rental assistance programs are discretionary programs, not entitlements, and are provided with a fixed amount of funding that falls very far below what is needed to serve all eligible households. Therefore, net transfer payments for housing assistance would remain roughly the same as a result of the proposed rule and would yield no net savings for the federal government.

D. Medicare Part D Low-Income Subsidy Program

The final rule should not include the Medicare Part D Low Income Subsidy (LIS) in the definition of benefits to be considered under public charge determinations as proposed in section § 212.21 b. The LIS provides subsides to low-income Medicare beneficiaries with Medicare Part D prescription drug coverage to help them pay Part D premiums, deductibles, and co-insurance. Current LIS

enrollment exceeds 12 million persons, or about 30 percent of all Part D enrollees. The LIS is only available to Medicare enrollees, which means LIS enrollees, or their spouses, must have a sufficient work history to qualify for Medicare or have end-stage renal disease. (Generally, individuals must work for 40 quarters or ten years to qualify for Medicare.) Medicare enrollees receiving SSI or Medicaid are automatically enrolled in the LIS, but the LIS is also available to Medicare enrollees who don’t receive these benefits who apply at the Social Security Administration. The LIS is available for individuals with incomes up to 150 percent of the poverty line and up to $12,320 ($24,600 for a couple) in assets.

The help that seniors receive with premiums and cost-sharing for prescription drugs makes a big difference in ensuring they get the medication they need to maintain their health. While Medicare Part D subsidies can play an important role in helping retired workers to afford their medication, it is a supplemental benefit and does not provide overall support to meet the recipient’s basic needs. It does not cover shelter, utilities, food, toiletries, transportation, or other expenses of daily living. Those who receive it cannot be reasonably viewed as relying on government benefits to support themselves.

Moreover, the LIS likely saves money for Medicare, which would otherwise have to pay for avoidable hospital care and other services that can result from seniors skipping their medications because of costs.

Finally, very few individuals applying for status adjustment or lawful entry and subject to a public charge determination will already be receiving Medicare or the LIS. Thus, its inclusion in the public charge definition would primarily be relevant in predicting who is likely to receive benefits in the future. For many, this would be a prediction about benefit receipt decades in the future, which will be highly uncertain.

E. Change to the benefit receipt “threshold” in public charge definition should be rejected

Currently, a public charge is one who is “primarily dependent” on — that is, receiving more than half of one’s income or support from — cash benefits such as SSI or TANF or receives government-provided institutional long-term care. In addition to adding other types of benefits relating to housing, health coverage, and food, the NPRM proposes to alter the extent of use of public benefits that would make an individual a public charge. It defines one to be a public charge based on receipt of monetizable benefits in the amount of 15 percent of the federal poverty guidelines for one person (currently $1,821 per year). For non-monetizable benefits, the rule sets the threshold at receipt for 12 cumulative months in a 36-month period, or 9 months if a monetizable benefit is also received. Of 83 Fed. Reg. 51165-6, DHS seeks comment whether the proposed 15 percent threshold is an appropriate measure of reliance on public benefits, as well as whether receipt of benefits in amounts below the threshold should be considered in some manner in a public charge determination. DHS similarly seeks comment on its proposed duration-of-receipt approach to benefits that cannot be monetized.

The thresholds in the proposed rule should be withdrawn; instead, DHS should retain the current standard of “primarily dependent.” (As we comment elsewhere, the benefits considered for a public charge determination should be limited to those currently considered: cash benefits like TANF or SSI and Medicaid long-term care.) The new thresholds proposed are arbitrary, unworkable, and do
not represent a reasonable measure of whether an immigrant is a public charge. Nor should receipt of benefits at or below the threshold levels be considered as part of the totality of the circumstances test. If any benefit receipt below the threshold were to be considered in the totality of circumstances, the thresholds would become entirely meaningless.

The rule not only sets thresholds that are arbitrary and low, but switches the role the threshold plays in making a public charge assessment by examining whether benefits received exceed a standardized amount or duration rather than whether they support the majority of the individual immigrant’s basic needs. Any evaluation of whether an individual relies on public benefits for support or to meet basic needs would necessarily need to look at an individual’s income and the degree to which it is used to meet an individual’s basic needs, as the current “primarily dependent” standard does. Looking at a standardized amount of monetizable benefits bears no relation to the extent to which the individual relies on benefits to meet basic needs and is not a reasonable approach to a public charge determination. The amount of SNAP benefits, for example, that could exceed the 15 percent threshold might represent only part of the individual’s or household’s food budget and a small fraction of its income. In this circumstance, the threshold would represent an arbitrary and unreasonable interpretation of the statutory concept of a public charge.

1. Thresholds would be very unlikely to matter in prospective determinations

Moreover, as a practical matter, the thresholds would likely be meaningless in the context of any prospective determination of whether someone who has never received any public benefits (and may not even have entered the country) is likely to become a public charge. This is true for both monetizable and non-monetizable benefits.

For monetizable benefits, an immigration officer making such prospective determination would not be in a position to calculate the amount of, for example, SNAP benefits, that an individual immigrant might receive at some point in the future. Those benefits would depend on the income of the immigrant’s household (and of other non-family members with whom they share meals); it also could vary depending on shelter costs (which vary widely across jurisdictions) or other deductions including for medical care and child care. In fact, while the average annual SNAP benefit per person of $1,527.59 (Table 10 at FR 51160) is less than this threshold, an immigration officer would likely presume that any SNAP receipt would exceed the threshold and certainly could not make nuanced distinctions between the benefit that one individual would receive as compared to another’s benefit level.

Prospectively estimating the value of, for example, a Housing Choice Voucher under Section 8 would be even more unworkable. First, as noted above, a DHS official could never assume that an individual is likely to receive housing assistance since only a small fraction of eligible households receive housing assistance. Moreover, the value of a subsidy would depend on the location and the contract with the landlord for the rental amount. Here too, an immigration officer would have no capacity to estimate any of this, particularly with respect to decades into the future.

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For prospective determination of possible receipt of nonmonetizable benefits, a durational estimate of receipt is also not feasible. As hard as it would be to predict future Medicaid receipt, it would be even harder to accurately predict months of Medicaid receipt in any given future year.

As a practical matter, these thresholds cannot be applied in a prospective determination and, thus, DHS officials would simply determine whether there is a likelihood of receiving any amount or duration of benefits. The fact that this aspect of the rule would be meaningless for prospective determinations is not a side issue; prospective determinations would be the main application of the proposed public charge rule. With some exceptions, immigrants who do not already have LPR status are not eligible for most of the public benefit programs implicated here, so their potential prospective receipt, not past or current receipt, will most typically be considered.

2. For monetizable benefits, the threshold would mean that someone receiving $5 per day in benefits would be deemed a public charge

The proposed threshold of 15 percent of the federal poverty guidelines for an individual is not a reasonable measure of dependence on public benefits and is too low to represent any significant provision for basic needs. The 15 percent threshold of $1,821 annually represents $152 a month, or $5 a day. Benefit receipt in this amount could represent a small fraction of a household’s income and is not a marker of someone largely or substantially dependent on government assistance. For an individual working full-time at the minimum wage, this threshold represents about 12 percent of earnings (and an even smaller percentage of total income if the benefits are considered). Defining an individual whose earnings largely support his or her basic expenses as a public charge is at odds with the longstanding caselaw and congressional intent.

With respect to the request for comments on the 15 percent level chosen, as discussed above, any measure of reliance on public benefits should look at the immigrant’s income and needs; benefits should only be considered for public charge purposes if the immigrant is primarily dependent upon the benefits — that is, receives more than half of their income from the benefits. As noted elsewhere, the benefits considered here should not expand beyond those in the 1999 Field Guidance.

3. Non-monetizable benefit threshold is also problematic

The fact that certain benefits cannot be monetized, most notably health coverage, underscores that they should not be included in any public charge considerations. For example, health coverage can provide important benefits for individual and community well-being but do not constitute basic support.

Moreover, durational receipt measures are meaningless in the context of health coverage since duration does not represent the extent of benefits actually used. An individual applying for Medicaid for a single instance of care for a medical problem would likely be enrolled for a full year — and in a managed care situation, premiums would be paid each month — even if he or she only uses the health coverage for a single medical visit.
F. Receipt of benefits within prior 36 months should not be a heavily weighed negative factor

As DHS notes repeatedly, a public charge determination must be made on the totality of the circumstances, and receipt of benefits is apparently included as one aspect of the statutory financial status factor. The proposed rule, however, weighs some circumstances differently than others — considering current receipt of benefits, or receipt within the 36 months prior to application for a visa, admission, or adjustment of status, as a heavily weighed negative factor. (Section 212.22(c)) By weighing current or (not so) recent receipt of benefits as heavily negative, DHS essentially puts a thumb on the scale, undercutting the totality of the circumstances test. (For the same reason, we also object to including certain medical conditions as a heavily weighed negative factor.) While the preamble states that the weight given receipt of benefits within the prior 36 months would depend on how recently the benefits had been received and for how long (see, e.g., p. 51199), the rule in fact undercuts this continuum analysis and instead labels benefit receipt within the past 36 months as a heavily weighed negative factor, even if the receipt is for a brief time or occurred, for example, two to three years prior. In order to implement the totality of circumstances test, there should be no heavily weighed factors. (See Section II.H.)

G. Changes in how cash assistance is considered are problematic

Under the current policy as set forth in the 1999 Field Guidance, an individual who is primarily dependent on cash benefits for income maintenance, or institutionalized long-term care, is considered a public charge. Cash benefits include Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and state and local cash programs such as General Assistance.

The proposed regulation carries forward this list of cash or long-term care benefits as part of its definition of public charge. But, unlike the food, health and housing programs whose receipt would only be considered if received beyond 60 days after the publication of the final rule, the rule proposes to consider receipt of “any amount” of cash (or long-term care) benefits as a negative factor even if the receipt occurred prior to the adoption of a final rule. At p. 51210, DHS invites comment on whether it should consider receipt of benefits previously considered under the 1999 Field Guidance at all or in some way other than as a negative factor in the totality of the circumstances.

DHS should not consider benefits received prior to 60 days after the new rule becomes final as a negative factor in its newly configured public charge determination. DHS may have reasoned that this portion of the policy has not changed, but that would not be correct. DHS is proposing to change the standard under which individuals receiving cash would be considered a public charge, replacing the “primarily dependent” test of the current policy. Proposed section 212.22(d) would consider receipt of “any amount” of cash assistance for income maintenance under the old policy as a negative factor for public charge purposes. (FR 51292). DHS is thus impermissibly retroactively applying a change in how receipt of cash assistance during the period controlled by the 1999 Field Guidance is considered.

The proposed rule also changes the way that benefits that were considered for public charge purposes under the prior policy will be considered if received in the future, after the effective date of the rule. Any cash benefits received after the proposed rule has been final for 60 days would be
considered based on the 15 percent of federal poverty guidelines thresholds rather than the “primarily dependent” standard of the 1999 Field Guidance. As discussed elsewhere, the “primarily dependent” standard should be retained for any public charge determination, including cash benefits for income maintenance. Moreover, receipt of cash benefits (or any other public benefits) after the new rule goes into effect would be a heavily weighed negative factor if within 36 months prior to the application for visa, entry, or adjustment of status. As discussed elsewhere, adding past receipt of benefits as a heavily weighed factor is contrary to the totality of circumstances test as well as to the prospective nature of the public charge determination.

H. The rule would create administrative burden on states and localities

The rule would create new challenges for state and local agencies administering these programs. Issues state and local agencies would face include:

- **Increased “churn” among the caseload.** As families learned about the new rule, some would terminate their participation in programs, as we have already seen in response to draft public charge-related proposed rule changes leaked to the media. 93 But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that would experience a new kind of churn in their caseloads. Some families might return if they came to understand that they were not subject to a public charge determination. Others might reapply when their family or health circumstances became more serious; for example, a child might be withdrawn from Medicaid coverage, but without treatment — such as asthma medication — the child’s condition might worsen, and the family would then re-enroll the child despite fears of potential immigration-related consequences. This on-again off-again approach to enrollment not only yields negative results for families, but also results in duplicative work for state and local agencies. Churn is expensive for state; in one study of SNAP-related churn, the costs averaged $80 for each instance of churn that requires a new application. 94

- **Increased work to provide information and verification of benefit application and receipt for people undergoing a public charge determination.** The rule’s associated form I-944 would require all individuals undergoing a public charge determination to report if they applied for or received any benefit considered under the rule. They would have to provide detail information about the amount and dates of benefit receipt and documentation issued by agencies to support these statements, as well as information regarding whether any of the benefits count as Medicaid for emergency medical conditions or otherwise fall into one of the exceptions to the overall rule. They also would be required to document if they have discontinued benefit receipt. These requirements would result in significant work for agency staff to produce documentation and respond to families’ questions, increasing administrative costs and impeding the agency’s ongoing work to administer benefits to eligible applicants and recipients.


• **Responding to inquiries related to the new rule.** State agencies would have to prepare to answer questions from families (as well as service providers and community organizations) about the new rule. Agencies would experience increased call volume and visits from families concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses and laws. Yet, if state and local agencies simply told all families making such inquiries that they must speak to an immigration attorney to get their questions answered, this almost surely would exacerbate the chill effect and lead many who will never face a public charge determination to forgo benefits their families need. Those who need public benefits are unlikely to be able to afford to seek legal counsel to see if getting benefits will jeopardize their family’s immigration goals; if advised to seek legal counsel, they may well determine that receipt of benefits is simply too risky. Given this, state and local agencies should try to provide accurate information to families, but that would require training and staff time.

• **Modifying existing communications and forms related to public charge.** For almost 20 years, agencies have worked under the consistent and clear rules about when an individual’s receipt of benefits could result in a negative finding in a public charge determination. Agencies have incorporated these messages on a variety of communications, including applications, application instructions, websites, posters, notices, and in scripts and trainings for staff. All of these communications would have to be identified and replaced. And, as noted above, the new rules would be so far reaching and complicated that states might not be able to replace them with messages that didn’t inappropriately deter eligible people.

At FR 51174, DHS seeks input on whether the effective date of the rule should be delayed in order to help agencies that administer benefits adjust systems. As noted above, implementation of the proposed rule would create new administrative burdens and increase tasks on state and local agencies that administer public benefit programs. The proposal should not be implemented at all, but if it is, implementation should be delayed for as long as possible to enable adjustment of systems and processes including updating forms, notices, training staff.
IV. Proposed Policy Changes Would Lead Immigrant Families to Forgo Needed Assistance and Health Care and Cause Significant Harm to Communities, States, and Individuals

There is substantial evidence that modifying the public charge rules to consider utilization of programs such as Medicaid and SNAP — programs that serve a large share of the U.S. population — would sow fear and confusion, resulting in large numbers of people forgoing benefits for which they are eligible, including those who will never undergo a public charge determination and who will reside in the U.S. throughout their lifetimes. Moreover, the confusion caused by the rule would likely cause people to forgo benefits not listed under the rule as well. People “chilled” from participating in programs would have unmet immediate needs during hard times, resulting in long-term negative effects for individuals and society.

A. The proposed rule would depress benefit participation

The rule would be certain to foster confusion and widespread fear in immigrant communities. These rules are complicated, and even rumors of the rule changes have already led many to forgo benefits for which they qualify out of fear that their families could suffer negative immigration-related consequences. Shortly after the first media stories detailing the Administration’s plan to modify public charge policy, numerous reports appeared of how fears associated with these potential changes resulted in eligible people forgoing benefits. For example, just months after the first leaks of the executive order, a Los Angeles-based health care provider serving a largely Latino community reported a 20 percent drop in SNAP enrollment and a 54 percent drop in Medicaid enrollment among children, as well as an overall 40 percent decline in program re-enrollments. Such reports of drops in participation persisted as additional leaks of the public charge policy changes emerged; service providers reported that immigrant families “canceled appointments, urgent requests for disenrollment and even subsequent requests to have any record of families purged from the


Some groups, such as agencies that oversee the WIC nutrition program for low-income women, infants, and children, began to track declines in participation. In at least 18 states, WIC agencies reported enrollment declines of up to 20 percent, citing fear related to changes in immigration policy.

In our own work providing training and technical assistance to thousands of service providers and state and county officials who assist people in enrollment in public benefit programs, we began hearing concerns that program participants were requesting termination of their enrollment in programs and others were requesting to withdraw applications that were in process shortly after the first leak of the Administration’s planned public charge changes. These reports have intensified since new information has become public, especially since DHS released the draft proposal on its website and the proposed rule was published in the federal register.

B. People unlikely to face a public charge determination would forgo benefits

The rule sends a very strong message that the federal government frowns upon immigrant families accessing benefits, even when necessary for their health, and that receiving benefits could harm an individual’s immigration status down the road.

This message may resonate to a much larger degree than the details of a complex policy that applies to some, but not all, immigrant families. Immigration policies are complicated, the rules for determining whether someone is a public charge are technical, and the circumstances under which the authorities make a determination can be hard to understand; therefore, the number of low-income immigrant families that would choose not to receive benefits would likely exceed by a sizable amount the number that would ultimately be subject to a public charge determination. For example, while the naturalization process to become a U.S. citizen does not include a public charge test, there have been numerous accounts in the media of immigrants forgoing benefits out of fear that they would be denied the opportunity to become a U.S. citizen.

This has happened previously. In the late 1990s, widespread confusion and fear about how public charge rules could impact families’ ability to adjust their status among immigrants with children eligible for and in need of federal benefits such as SNAP and Medicaid deterred many from applying for benefits. Partly as a result, the share of eligible individuals among these groups who were participating in benefits was low. For example, in 1999, just 40 percent of eligible citizen children (who themselves are not subject to a public charge determination) living in households with immigrants participated in SNAP, compared to 70 percent of all eligible children.

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C. Chill would have harmful short- and long-term impacts on people and society

The proposed rule would result in eligible people forgoing the benefits newly considered under the rule — Medicaid, SNAP, housing assistance, and low-income subsidies for Medicare — as well as other government supports such as WIC. Those choosing to forgo benefits would largely be individuals who would never undergo a public charge determination since most people subject to a determination do not meet the restrictive immigration-related eligibility requirements to participate in the programs. But the rules are complicated. Even if individuals understand them, they may well fear that the rules can change and that anything that could threaten their ability to remain with their families in their communities here in the U.S. could be simply too risky.

This broader chill would likely to have the largest effect on children’s participation in benefit programs (though some children who will face a public charge determination are eligible for benefits such as SNAP, Medicaid, and federal rental assistance). Nearly 80 percent of children of immigrants are U.S. citizens, and, thus, are not subject to a public charge determination; nor are many of their immigrant parents, based on their current status. But a parent who does not understand the rules and who does understand the overriding message of the rule — that immigrant families’ receipt of benefits can put their ability to remain in the U.S. in jeopardy — may decide that it is too risky for their children to participate in Medicaid or SNAP.

1. Consequences of forgoing nutrition assistance

For eligible low-income people in need of food assistance, the consequences of not participating in SNAP can be significant. Going without SNAP would result in increased food insecurity, which has been linked to a range of negative and costly impacts. Recent research has looked at the loss of immigrant eligibility in SNAP following the 1996 welfare law and the subsequent restoration for some immigrants in the late 1990s and early 2000s to examine how losing benefits affected participants. This research uses the variation in immigrant eligibility across states from 1998 to 2003, as states restored eligibility for some immigrants who were made ineligible due to the 1996 welfare law, to isolate the impact of SNAP eligibility. Based on findings that an additional year of SNAP eligibility in early life is associated with improvements in health outcomes of school-age children, researchers estimate that the elimination of one year of parental eligibility for SNAP in early life leads to a $140 increase in health expenditures per child between the ages of 6 and 16.\(^\text{101}\)

More broadly, as discussed in Section III B(4), receipt of SNAP benefits among young children is associated with better long-term outcomes for children, including better health and education outcomes — both of which are important for future productivity and well-being and earnings as adults.\(^\text{102}\) When children’s life trajectories are shortchanged, not only do those children lose, but the nation loses out on their full potential as well.


When eligible low-income households lose SNAP benefits, many experience negative outcomes. Similar negative outcomes are likely for individuals who forgo needed SNAP benefits because of the fear of accessing government assistance. Cutting SNAP benefits is associated with an increase in food insecurity. When the temporary increase in SNAP benefits provided under the Recovery Act ended in November 2013, food insecurity began to rise. The prevalence of food insecurity among households that consistently participated in SNAP increased by 8 percent — and the prevalence of very low food security increased by 14 percent — compared to other low-income households.\(^\text{103}\) This is significant because food insecurity is associated with increased health care costs. For example, one recent paper found that people in food-insecure households spend roughly 45 percent more on medical costs in a year ($6,100) than people in food-secure households ($4,200).\(^\text{104}\)

SNAP receipt has also been linked to reduced health care costs, suggesting that participation by eligible households, including legal immigrants, is an important preventive health strategy. An analysis of national data on overall health care expenditures finds that after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur an average of about $1,400, or nearly 25 percent, less in medical care costs in a year (including costs paid by private or public insurance) than non-participants.\(^\text{105}\)

2. Consequences of forgoing Medicaid

If eligible people forgo enrolling in Medicaid due to fear related to public charge, uninsured rates would rise, access to care would diminish, and health outcomes would worsen. Children would see both worse short-term health outcomes and diminished long-term outcomes extending well beyond health. States, health providers, and local charitable organizations would also face significant challenges.

Research shows that Medicaid improves health across a variety of indicators. For example, one recent study compared Arkansas and Kentucky, which have adopted the Affordable Care Act’s (ACA) Medicaid expansion, with Texas, which hasn’t.\(^\text{106}\) In the expansion’s first three years, the uninsured rate among the group eligible for expansion coverage dropped more than 20 percentage points more in Arkansas and Kentucky than in Texas. In Arkansas and Kentucky, the expansion

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\(^\text{106}\) Benjamin Sommers *et al.*, “Three-Year Impacts of the Affordable Care Act: Improved Medical Care and Health Among Low-Income Adults,” *Health Affairs*, June 2017, [http://content.healthaffairs.org/content/early/2017/05/15/hlthaff.2017.0293.full](http://content.healthaffairs.org/content/early/2017/05/15/hlthaff.2017.0293.full).
fueled a 29 percent increase in the share of people with a personal doctor and a 24 percent increase in the share of people who received a checkup in the past year. With greater access to care came better outcomes: Medicaid expansion resulted in a 42 percent increase in the share of people who said they were “excellent” health. In Arkansas and Kentucky, Medicaid expansion has made people more financially secure: the share of people having trouble paying their medical bills dropped by 25 percent.  

Forgoing Medicaid coverage due to fear would undermine these positive health outcomes.

Children — most of whom are U.S. citizens — would be particularly harmed by the proposed rule. Medicaid provides children access to important health services that promote school readiness, such as ensuring access to well-child exams, vaccines, and other important health screenings. As we explain in more detail in Section III.A4., children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits. Moreover, children eligible for Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.

While a precise single estimate of the impact of the proposed rule on Medicaid participation is challenging to calculate, reasonable ranges can be explored. A recent analysis by the Kaiser Family Foundation illustrated potential Medicaid disenrollment rates ranging from 15 to 35 percent due to the proposed rule. Kaiser researchers found that potentially 875,000 to 2 million U.S. citizen children with a noncitizen parent could lose coverage, raising the uninsured rate among these children from 8 percent to between 14 and 22 percent. This is consistent with research documenting the significant decline in Medicaid enrollment for eligible immigrants after welfare reform in the 1990s.

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A large chilling effect on Medicaid participation would increase uncompensated care and hurt safety net providers. The higher the uninsured rate, the greater the likelihood of safety net providers treating the uninsured and incurring uncompensated care costs. Hospitals saw significant reductions in uncompensated care costs as the ACA’s Medicaid expansion to low-income adults, marketplace subsidies, and major insurance market reforms took effect in 2014. From 2013 to 2015, the nationwide uninsured rate fell 35 percent, and nationwide hospital uncompensated care costs fell by about 30 percent as a share of hospital budgets — a $12 billion drop in 2015 dollars. But such costs fell even more precipitously in states that adopted the Medicaid expansion, where hospitals’ uncompensated care costs fell by roughly half.112 And in the ten expansion states (Kentucky, West Virginia, Washington, Oregon, Rhode Island, California, Vermont, Minnesota, Michigan, and Illinois) where uninsured rates dropped the most, uncompensated care costs fell by 57 percent on average.

There is a tight relationship between the magnitude of a state’s uninsured rate reductions and its drop in uncompensated care: overall, each 10 percent decline in uninsured rates translates into a roughly 8.6 percent decline in hospital uncompensated care costs.113 By causing eligible individuals to forgo coverage, the proposed rule would increase the number of people lacking insurance and drive up the level of uncompensated care — costs that will be borne in large part by safety net providers. As discussed in Section VI.G(4), the proposed rule lacks adequate analysis of this issue, failing to estimate either the number of people who would forgo Medicaid coverage or the resulting increase in uncompensated care.

3. Consequences of forgoing rental assistance

If families forgo rental assistance due to fear related to the public charge rules, they would miss out on the opportunity to attain the educational, developmental, and health benefits we describe in Section III.C(4) and ultimately risk missing the chance to improve children’s success over the long term.114 A rigorous evaluation conducted from 2000 to 2004 examined the effect of Housing Choice Vouchers on low-income families with children. When researchers compared families that were randomly selected to receive vouchers (and then used a voucher for at least part of the year in which a follow up survey was conducted) to families in a control group who did not use vouchers, they found that vouchers:

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113 This estimate is based on a CBPP regression of percent changes in uncompensated care on percent changes in state uninsured rates, weighted by state population size. CBPP used Medicaid and CHIP Payment and Access Commission data on uncompensated care costs and Census Bureau data on uninsured rates by state.

• reduced the share of families that lived in shelters or on the street by three-fourths, from 13 percent to 3 percent;
• reduced the share of families living in crowded conditions by more than half, from 46 percent to 22 percent; and
• reduced the number of times that families moved over a five-year period, on average, by close to 40 percent.115

Research also links the housing problems that rental assistance addresses to a range of other adverse outcomes with long-term consequences. Among children, homelessness is associated with increased likelihood of cognitive and mental health problems,116 physical health problems such as asthma,117 physical assaults,118 accidental injuries,119 and poor school performance.120 Studies have found that children in crowded homes score lower on reading tests and complete less schooling than their peers, perhaps because they lack an appropriate space to do homework and experience higher stress that interferes with academic performance.121

4. Families could forgo benefits not included in the public charge definition

The chill effect the rule would produce is unlikely to be limited to receipt of benefits included in the public charge definition. By dramatically expanding the set of benefits considered in the public charge definition. 

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115 Data are from a follow-up survey conducted four and a half to five years after random assignment. Data show the percentage of families that were homeless and without homes of their own during the 12 months preceding the survey, the percentage in overcrowded housing at the time of the survey, and the total number of moves during the period after random assignment. This study targeted families who received, had recently received, or were eligible for Temporary Assistance for Needy Families (TANF), and 80 percent of participants received TANF benefits at the start of the evaluation. By the end of the study period, however, only about 30 percent of participants received TANF benefits. By comparison, 19 percent of all voucher holders with children received TANF benefits in 2010, according to HUD data. Michelle Wood, Jennifer Turnham, and Gregory Mills, “Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation,” Housing Policy Debate, Vol. 19, issue 2, pp. 367-412, 2008; Gregory Mills et al., “Effects of Housing Vouchers on Welfare Families,” prepared for U.S. Department of Housing and Urban Development Office of Policy Development and Research, September 2006.


117 Berti et al.


119 Frencher et al.


charge determination — and the share of both U.S-born citizens and immigrants alike who meet the standards set forth in the definition — the rule would likely lead some families that include immigrants to fear accessing other important benefits, such as WIC (the Special Supplemental Nutrition Program for Women, Infants, and Children). Forgoing the vital support that WIC provides, including nutritious foods, nutrition education, breastfeeding support, and referrals to health care and social services, can put pregnant and nursing women’s and young children’s health at risk. Research shows that WIC improves children’s diets and that when women participate, their babies are healthier, are more likely to survive infancy, and go further in school.122

D. Thresholds and limited exemptions would not be enough to halt fear of using benefits

The proposed rule includes thresholds for the amounts or duration (in the case of non-monetizable benefits) of benefit receipt that counts against an individual in a public charge determination. It also includes certain exemptions of Medicaid benefits. As described in Section III.E, the thresholds would be unlikely to meaningfully impact the outcome of public charge determinations, in which immigration officials would make predictions about future benefit receipt based on so little information that consideration of the thresholds would not be possible. And, as discussed below, the Medicaid exemptions are drawn so narrowly as to be essentially meaningless. Finally, the thresholds and exemptions would not likely be well understood by the general public or do much to reduce the number of people who chose to forgo benefits out of fear of negative immigration consequences.

1. Medicaid

For Medicaid, the “threshold” of 12 months of receipt (or 9 months in combination with other benefits) would provide little assurance to eligible individuals. If they learned about the thresholds at all, they might still be concerned about signing up for coverage, fearing that they might experience more acute health care needs later and should refrain from using Medicaid until or unless that occurred. This would undermine access to preventative care and could result in people experiencing significant gaps in coverage, delaying or avoiding getting treatments, and ultimately seeking out services after conditions have worsened. They also might know that Medicaid eligibility periods typically last a year and may be unclear about how that period can be shortened. And they might fear, even if told of the threshold, that any Medicaid receipt would be frowned upon by immigration officials.

The proposed rule includes two kinds of exemptions for certain Medicaid services: services required under the Individuals with Disabilities Education Act (IDEA), which ensures that children with disabilities have access to public education in the least restrictive environment based on their individual needs, and services considered emergency services. Neither exemption is meaningful.

• IDEA: Under the IDEA, children’s needs are identified in an individualized education plan (IEP), which details the education and related services they need. In many cases the IEP

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includes services that Medicaid covers for children, such as physical and speech therapy.\textsuperscript{123} Medicaid provides reimbursement for health care services that are necessary for students with disabilities to succeed in school when the following conditions are met: the services are listed in the child’s IEP; the \textit{child is enrolled in Medicaid}; Medicaid covers the service; and the school is recognized as a Medicaid provider. If a family does not enroll a child in Medicaid out of fear of negative immigration consequences, the school will not be eligible for reimbursement for services provided to that child. Even if a child enrolled in Medicaid and only accessed IDEA-related services, the child would still be a full Medicaid participant; in states that use managed care for Medicaid services, full managed care payments would be made to the managed care partner on the child’s behalf.

- \textbf{Emergency services:} The rule also exempts Medicaid payments for emergency conditions from being considered during public charge determinations. However, many people would not know that this exemption exists. Those who did know it exists might not know when they are truly experiencing a medical emergency or trust that what they believe is a medical emergency will be viewed as a medical emergency by an immigration official. Finally, people who experience medical emergencies often need to have follow-up treatment to fully recover from their injury or illness. People might not understand to what extent this exemption applies, and many would not be able to get follow-up treatment if they fear continuing enrollment in Medicaid, thus undermining their ability to fully recover.

2. SNAP

First, as discussed in the Section III.E, the threshold concept is very unlikely to matter in the prospective predictions that immigration officials would have to make. Most applicants for entry or adjustment would not be current or former SNAP recipients, so the benefit-related question would concern the individual’s likelihood of prospective receipt. Immigration officials would struggle to answer this accurately even without the added complication of trying to predict the amount of benefits someone could receive up to decades in the future.

For immigrant families potentially concerned about receiving SNAP out of fear of negative immigration consequences down the road — including, as noted above, many individuals who will never face a public charge determination — the threshold would be unlikely to make a fearful family decide to receive needed SNAP benefits.

People applying for SNAP do not know how much in benefits they will receive; indeed, the amount can fluctuate as their circumstances change. Households would be unlikely to understand the threshold, particularly since it is based on the amount of benefits an \textit{individual} receives but their SNAP benefit is calculated as a \textit{household} benefit. Households do not know how long they will continue to need and qualify for SNAP and might be rightfully wary of their ability to calculate the threshold correctly and then disenroll from the program before they hit the limit. Moreover, households might be concerned that they should “save up” their ability to receive SNAP in case their circumstances worsened later in the year.

Ultimately, complex policy details such as benefit amount and duration thresholds and exemptions for receipt of certain kinds of medical services would be unlikely to affect immigration officials’ judgments about the likelihood of future benefit receipt or a family’s concern about the immigration risks associated with benefit receipt. The proposed rule sends a clear message that benefit receipt makes an individual unwelcome and unwanted in the country. Many people, deeply focused on keeping their families together and building a life in the U.S., would likely forgo assistance for themselves and their children as a result. The NPRM fails to account sufficiently for these foreseeable and substantial impacts, including in its sections purporting to account for the rule’s costs and benefits, as discussed at Section VI below.
V. Use of Benefits Among Children Should Not Be Considered in Public Charge Determinations

At FR 51174, DHS seeks comment about public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. Given the evidence that inclusion of children’s benefits in the public charge definition would result in significant numbers of children forgoing benefits they need for their healthy development, and given that receipt of benefits in childhood is a reflection of the parent’s income rather than the child’s future earning potential, we urge that the final rule exclude any benefit receipt by children from consideration in public charge determinations.

If finalized, the proposed rule would cause significant harm to children (both those who would and would not face a public charge determination) whose families would be fearful of accessing vital benefits needed at critical stages in their lives. Going without these supports can have life-long negative consequences. Moreover, benefits received by pregnant women are also vital to the short- and long-term wellness of children and healthy birth outcomes for both mothers and children. Thus, to protect children from some of the negative impacts of the proposed rule, benefits provided to pregnant and postpartum women should be excluded.

Excluding benefits to children and pregnant women whose health is inextricably linked to their children would allow states, consumer groups, health providers, schools, and other service providers and trusted sources to try to send a clearer message to these populations that they could access critical supports without fear of immigration consequences. However, this change alone would not eliminate fear or the chill effect, even on benefit participation among children and pregnant women. Nor would it eliminate negative impacts on children in families in which some or all members may forgo needed assistance, affecting the children’s economic well-being and health. To fully eliminate the chill and harm, the proposed rule should be fully withdrawn.

At FR 51174, DHS also requests comments related to adding receipt of health coverage through the Children’s Health Insurance Program (CHIP) to the public charge determination. Including CHIP — which serves children at significantly higher income levels than Medicaid — would increase the number of individuals in working families who would be denied status adjustment or entry and expand still further the chill effect, leading more children and pregnant women to forgo needed health coverage, and by extension, health care. Most, though not all, of those forgoing benefits would never face a public charge determination; thus, the main impact adding CHIP to the public charge definition would be to expand chill and the negative health effects of the proposed rule.

A. Nutrition assistance is vital to children and pregnant women

Nutrition assistance provides important supplemental support to children and pregnant women at a critical period in their lives. These modest investments in young children and pregnant women result in positive health outcomes in the short, medium, and long term. A wide body of research documents the negative consequences of poverty and other adversity on children in their earliest years, which can affect their physical, mental and economic well-being as adults. Restricting access to SNAP and Medicaid or creating fear that discourages access to these programs would result in
poorer health, increased health care costs, and reduced well-being immediately and in the long run for children and pregnant women.

SNAP serves a vital role in reducing food insecurity among low-income children. A recent rigorous study of the relationship between participation in SNAP and food security found that food insecurity among children dropped by about one-third after their families received SNAP benefits for six months.124

Children in families with access to SNAP also fare better later in life, which demonstrates that participation in SNAP can actually reduce health-related costs. Researchers comparing the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birthweight babies. Adults who had access to SNAP in early childhood had lower risks of obesity and other conditions related to heart disease and diabetes. Children with access to SNAP in early childhood and whose mothers had access during their pregnancy had better health and educational outcomes than children who didn’t have access.125

One result of decreasing access to SNAP for families with immigrant household members is that these households will have fewer resources to make ends meet, resulting in tradeoffs with harmful consequences. Without SNAP benefits, households eligible but not participating must spend more of their income on food. Research using geographical differences in food prices shows that when food prices are higher and SNAP benefits don’t stretch as far, children have worse health outcomes. Children in areas with higher food costs receive less preventive and ambulatory care, are at more risk of food insecurity, and have marginally worse nutritional outcomes. Specifically, a 10 percent increase in SNAP purchasing power increases the chances of a check-up in the past year by 8 percent and the chances of any doctor’s visit by 3 percent, reduces the prevalence of food insecurity by 22 percent, raises an index of healthy eating among children by 3 percent, and may be associated with better school attendance.126 "The proposed rule would result in some immigrant families forgoing SNAP benefits, which would lead to worse health outcomes as they struggled to afford an adequate diet.

While excluding SNAP benefits received by children from public charge determinations would be positive, it would also be inadequate to protect the well-being of children. If adults forgo benefits and only children receive them, the amount the household has to purchase food for all household

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Yiran Li et al., “Child Food Insecurity and the Food Stamp Program: What a Difference Monthly Data Make,” *Social Services Review*, 88(2), 2014, [uknowledge.uky.edu/cgi/viewcontent.cgi?article=1021&context=ukcpr_papers](uknowledge.uky.edu/cgi/viewcontent.cgi?article=1021&context=ukcpr_papers).


members will be inadequate; both children and adults in the household will be likelier to face economic insecurity and potential food insecurity.

Finally, as noted earlier, some families that include immigrants might also fear accessing benefits that are not included in the rule. If this results in pregnant women and young children missing out on WIC, these groups will also experience poorer health outcomes. Forgoing the vital support that the WIC nutrition program provides — including nutritious foods, nutrition education, breastfeeding support, and referrals to health care and social services — can put women’s and young children’s health at risk. Research shows that WIC improves children’s diets and that when women participate, their babies are healthier, are more likely to survive infancy, and go further in school.127

**B. Medicaid provides essential health coverage to children and pregnant women**

Medicaid also plays a vital role in the health and future well-being of children and pregnant women. Medicaid coverage has a significant positive impact on children’s long-term outcomes. Children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations and emergency room visits.128 Moreover, children eligible for Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.129

Also, if children forgo Medicaid because of the rule, they will no longer have access to Medicaid’s Early Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. This benefit guarantees that children and adolescents under the age of 21 have access to comprehensive and preventive health services, including regular well-child exams; hearing, vision, and dental screenings; and other services to treat physical, mental, and developmental illnesses and disabilities. The loss of EPSDT would be particularly harmful to children with special health care needs, as Medicaid serves as the sole source of coverage for more than one-third of these children.130 See Section III.A(4) for more information about the importance of EPSDT in children’s long-term development.

Medicaid also provides prenatal and maternity care to low-income women and essential health and developmental care for newborns and children. In 2017, 43 percent of all births were paid for by Medicaid.131 Having health insurance coverage while pregnant and after is critical to the health and

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safety of both the mother and child. For example, research shows that when Oregon provided prenatal care for pregnant women who previously only qualified for labor and deliver services under emergency Medicaid, the state reduced the number of women who didn’t receive ongoing, regular prenatal care by nearly 32 percent. The reduction among high-risk pregnancies was larger — nearly 39 percent. The state also increased the diagnosis of gestational diabetes by 6 percent; and increased the diagnosis of poor fetal growth by 7 percent. Research shows that the absence of prenatal care increases the relative risk for preterm birth, low birth weight, increased mortality, and higher postnatal costs. Prenatal care helps manage pregnant women’s health conditions that could lead to health problems during pregnancy and adverse health outcomes for both the mother and child. Prenatal care improves maternal health and the subsequent use of pediatric care for newborns and children; it also serves as an entry point for newborns into the health care system, making it more likely that they get preventive care and other necessary services. Postpartum care is also crucial in ensuring women have access to services including breastfeeding support and screenings and treatment for maternal depression, which are critical to protecting children from the potential adverse physical and developmental effects of maternal depression.

Lack of prenatal care can create a ripple effect for safety net providers and schools. Providers, particularly safety net providers, would experience higher uncompensated care costs due to the higher likelihood that their maternity patients — and the newborns they give birth to — would be uninsured and have complex health care needs. Due to a lack of prenatal care, some children may develop complex health care needs that make getting an education challenging and may require the provision of special health care services, such as speech therapy, audiology services, or physical therapy. Schools, as described earlier, have to pay for these services in accordance with the IDEA requirements. Schools could claim Medicaid reimbursements for these services if these children are eligible for and enrolled in Medicaid, but the proposed rule would likely deter immigrant families with children with complex health care needs from enrolling.

Here, too, excluding only the health coverage of children from public charge consideration would not adequately address the harm to children, since health coverage for parents (not just pregnant and postpartum women) also is critical to children’s health outcomes. Healthy parents help ensure their children’s health and development. Children’s relationships with their parents can influence their brain structure and function, and in turn, mitigate the negative effects of trauma or adverse childhood experiences, including poverty.

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C. Rental assistance results in better outcomes for children

As noted in the Sections III.C and IV.C(3), federal rental assistance reduces homelessness and frequent moves and allows families to live in safer, less poor neighborhoods. Research has found that these benefits thus support better outcomes for children, in school performance as well as future trajectories, as they are linked to educational, developmental, and health benefits that can improve children’s chances of success over the long term.\textsuperscript{136}

In contrast, the detrimental effects of families forgoing housing assistance would be greater for children. It might lead to increased housing instability and frequent family moves, which have been linked to attention and behavioral problems among preschool children as well as lower academic achievement. (See discussion in Section II.C).

VI. The Cost-Benefit Analysis Exemplifies and Compounds the Serious Deficiencies in DHS’s Evaluation of and Justification for the Proposed Rule

We have explained in Sections I-V above that there are serious deficiencies in the proposed rule and in DHS’s justification and evaluation of its impacts. What DHS titles its “Cost-Benefit Analysis” (p. 51244 to 51274 of the NPRM) fails to remedy those deficiencies, and instead exemplifies and exacerbates them. Indeed, reasoning and conclusions from the “Cost-Benefit Analysis” are repeated in other parts of the NPRM. For instance, the section in the Executive Summary titled “Costs and Benefits” (p. 51117 to 51122 of the NPRM) and the section “Purpose of the Proposed Rule” both summarize benefits and quantified costs set out in the “Cost-Benefit Analysis,” and so suffer the same inadequacies of that analysis as discussed below.

This means that DHS’s overall analysis of the proposed rule, including in its discussion of costs and benefits in the Executive Summary and “Cost-Benefit Analysis,” does not provide the sound qualitative discussion or quantitative estimates needed to evaluate the proposed rule’s likely impacts. DHS’s analysis fails to answer basic questions related to whom the proposed rule would hurt, how it would affect the economy in the short and long term, and how it would affect key sectors within the economy. This means that the public, whose comments are sought on this proposed rule, lacks the information and data necessary to fully evaluate the proposed rule or comment on key aspects of the justification for it.

Furthermore, as Sections I-V demonstrate, this is an important proposed rule because of its likely far-reaching impacts — both about who is kept out or removed from the United States and how immigrant families (many of which include U.S. citizen children) likely fare under the proposed rule. If the potential impacts were limited in scope and magnitude, this lack of a fulsome analysis of the proposed rule’s costs and benefits might be less alarming, but this rule would mean that more families would be separated, businesses would lose workers, and families would forgo needed assistance, increasing hardship — impacts that warrant a careful and detailed evaluation. DHS’s failure to discuss or evaluate a great many aspects of the impacts makes the proposed rule difficult to comment on or to see what effect it would have if promulgated.

The following are some of the serious deficiencies in DHS’ analysis, including in the section titled “Cost-Benefit Analysis” and the “Costs and Benefits” section of the Executive Summary: DHS fails to evaluate a key likely impact of the proposed rule, namely, the increased denials for admission, change of status, or re-entry based on the new rule; DHS provides only a circular and conclusory assertion of the proposed rule’s purported benefits; DHS omits key foreseeable and quantifiable costs; DHS incorrectly claims a lack of relevant literature for identifying and evaluating costs when there is such literature; and DHS fails to identify or draw on substantial literature relevant to describing and evaluating various costs of the proposed rule. DHS should correct these and other deficiencies in its justification for the proposed rule. DHS should have published more in-depth analysis of the basis for the proposed rule so that stakeholders and the public could use that

137 For example, in Table 36.
information to understand and evaluate the proposal, and because such an analysis should be central to policymakers’ decisions about whether and how to revise the proposed rule.

This section sets out key examples of the inadequacies of DHS’s current evaluation of the proposed rule, including in the section titled “Cost-Benefit Analysis” and the “Costs and Benefits” section of the Executive Summary. And as noted, DHS should also fully review the information and citations presented in sections I to V above regarding the deficiencies of the proposed rule and its basis, and incorporate that information into a revised evaluation of the impacts of the proposed rule.

A. DHS fails to evaluate a key likely impact of the proposed rule: lower immigration

The justification for the proposed rule, including in the section titled “Cost-Benefit Analysis” and the “Costs and Benefits” section of the Executive Summary, does not address the key direct likely consequence of the proposed rule, which is to reduce the number of people who would be granted approval to adjust their status or come to the country lawfully, often to re-join family. In particular, DHS offers no qualitative or quantitative assessment of how many fewer people would be granted status adjustment annually, how many fewer people would be approved for lawful entry into the United States, and the characteristics of those no longer granted adjustment or entry — including race, age, country of origin, and ethnicity. Nor does the analysis include any assessment of the costs and benefits attributable to those changes.

The analysis laid out in the cost-benefit section also is too narrow in scope. It focuses on individuals applying for adjustment of status, extension of stay, or change of status from within the United States (see p. 51117, Table 1; p51236). It provides historical information about the number of applicants and denials in these categories under the existing public charge criteria, but fails to even provide this basic backward-looking information on individuals abroad applying for a visa and legal permanent residents returning from abroad, who also would be affected by the public charge determination in the proposed rule. And, of course, it fails to estimate for either group the increase in denials that would result from the proposed rule.

The National Environmental Policy Act section of the NPRM states that DHS has not sought to estimate the impact on denials or whether other immigrants would come in place of those who would be denied status: “Even if larger numbers of aliens were now found to be inadmissible on public charge grounds as a result of this rule, there may be some replacement effect from others who would, in turn, be considered for the existing visas. Therefore, DHS cannot estimate with any degree of certainty to what extent the potential for increased findings of inadmissibility on public charge grounds would result in fewer individuals being admitted to the United States.” (page 51277) But this strains credulity. DHS controls status adjustment and entry decisions. The agency has historical data on how many people have sought status adjustment through a process that requires a public charge determination. The agency has put forward a proposed rule indicating that, in its view, it is important to change the requirements for status adjustment and entry, and it would be the agency to implement the changes. It seems problematic that the agency would put forward such a sweeping change to immigration procedures and have no idea how it would affect adjustment and entry denials or whether the result would be a net reduction in individuals allowed to remain in or come into the country or a change in the composition of individuals permitted in or allowed to stay. If, indeed, the agency has no idea how this proposed rule would affect the target of its rule changes,
then it should not have put it forward, but instead sought to find a way to gather the evidence needed to understand the likely impact of its proposed changes.

Having failed to estimate the increase in denials, DHS then fails to evaluate the economic costs or benefits from that change in entry and adjustment adjudication. But there is a significant research literature on the economic and fiscal impacts of immigration. Two major National Academy of Sciences reports have explored this issue in ways that should inform an appropriate evaluation of this rule. The most recent, published in 2017, includes 10 chapters with well over 500 pages of substantive analysis, including discussions of its similarities to and updating of the analysis and findings in the earlier 1997 report, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*.\(^{138}\)

National Academy reports document the evidence-based consensus of an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and committee deliberations. Reports are peer reviewed and are approved by the National Academies of Sciences, Engineering, and Medicine.\(^{139}\) Given the relevance of the authoritative 2017 report to the questions of costs and benefits of reducing immigration, it is notable that the analysis is not used as the basis of quantitative estimates in the NPRM, nor are its findings refuted; it is absent entirely from the discussion. The final rule should reflect its findings.

**B. Proposed rule lacks analysis of purported “benefits” of the proposed rule**

The discussion of the gross benefits of the proposed rule is spare, purely qualitative, and, in large part, circular. It claims that the primary benefit of the proposed rule is “to better ensure that aliens who are admitted would not receive one or more public benefits … and instead will rely on their financial resource [sic], and those of family members, sponsors, and private organizations” (p. 51274). That, however, is just a restatement of the intent of the proposed rule and offers no explanation or analysis of how removing more individuals seeking status adjustment and denying entry to more people will benefit the country or the extent or distribution of those benefits. In fact, a widely recognized benefit of greater immigration is that it ameliorates problems associated with the aging of the population and results in greater economic growth, as discussed in Section II.F(4) above. Hence, the consequences of less immigration, which would do the opposite, include real costs that should be compared to any benefits the proposed rule provides. The cost-benefit analysis in the NPRM, however, fails to document or quantify any such benefits.

The 2017 NAS report, *The Economic and Fiscal Consequences of Immigration*, summarizes the consensus on the overall impact of immigration on the U.S. economy, with particular focus on the implications of an aging population:

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Importantly, immigration is integral to the nation’s economic growth. Immigration supplies workers who have helped the United States to avoid the problems facing stagnant economies created by unfavorable demographics—in particular, an aging (and, in the case of Japan, a shrinking) workforce. (p. 6)

Cutler et al. (1990) and many others have discussed the implications of population aging on secular stagnation in Japan and Europe while finding the United States less affected because of higher immigration rates.\footnote{David M. Cutler et al., Brookings Papers on Economic Activity, 1990, pp. 1-56.} Population aging is a major policy issue in part because of slowing labor force growth and a declining ratio of workers to dependents but also because, relative to other adult age groups, older people purchase fewer houses and durable goods, which drive a significant component of economic demand. (p. 25)

(The ways in which immigration affects the nation’s age distribution are also discussed in Section II.F. of these comments.)

In addition, the very limited discussion of the benefits of this proposed rule may be read as implying that “clarification” is a potential benefit of the proposed rule when it states that the proposed process under the proposed rule “would also help clarify to applicants the specific criteria that would be considered as inadmissible under public charge determinations.”\footnote{P. 21574.} Compared with current policy, however, the proposed rule and process may lead to less clarity and greater confusion, due to the wider scope of benefits covered by the proposed rule and the broad authority that it would give immigration officials to make far more complicated determinations. Indeed, as discussed in Section IV, the broad scope of the proposed rule would likely generate very substantial harm for many immigrant families that are confused by the rule and forgo benefits they need out of fear that receiving assistance their families qualify for could have negative immigration consequences. Moreover, as also discussed below in Subsection G, the confusion caused by the proposed rule would impose direct costs on a variety of entities that seek to help families understand the rules.

Indeed, if estimates of denials are not available only because any estimate would be so dependent on how immigration officials decide to apply the proposed rule — and this cannot be determined in advance — then DHS should acknowledge this lack of clarity and that the impact of the proposed rule could vary widely in practice because of the very broad authority it would afford to immigration officials (see also discussion at Section II). Relatedly, an adequate analysis of the costs, benefits, and impacts of the proposed rule should contain an assessment of how likely immigration officials would be to identify public charge risks accurately and the consequences of inaccurate assessments (see Section II).

C. Lack of estimate of denials of status adjustment and lawful entry means that key costs to the country are missing from analysis

A key consequence of the proposed rule will be an increase in denials for admission, change of status, or re-entry. As set out below, DHS’s identification of these impacts and the costs that flow from them is wholly inadequate. They should be included in DHS’s evaluation of the proposed rule,
and certainly should be included in any discussion of the costs and benefits of the proposed rule, such as those that DHS purports to set out in the Executive Summary and “Cost-Benefit Analysis.”

1. Estimates needed for both denials and reduced applications for admission, change of status, or re-entry

The proposed rule aims to provide “a standard for determining whether an alien who seeks admission into the United States as a nonimmigrant or as an immigrant, or seeks adjustment of status, is likely at any time to become a public charge.” (p. 51116) DHS acknowledges that increased denials will flow from this, stating in Table 1 under the heading “Expected Impact of Proposed Rule” that a quantitative cost is that “DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determinations.” (p. 51119) This statement also appears in Table 36 in the “Cost-Benefit Analysis” section.

Yet, as noted above, DHS provides no estimate (in the “Cost-Benefit Analysis” section, the Executive Summary section on Costs and Benefits, or elsewhere in the NPRM) either of how many denials there would be or how other impacts of the proposed rule on people’s behavior would affect the size and characteristics of the immigrant population. For example, legal permanent residents might face denial of readmission when returning from a period of time abroad to care for a dying parent; or they might be discouraged from leaving the U.S. out of fear that they would be denied readmission.

Changes in the size and characteristics of the immigrant population could arise not only from actual denials of admission or adjustments of status based on the proposed rule’s new public charge criteria, but also because people who would meet the standard might nevertheless be deterred from seeking admission (or, if already in the country, from seeking a change in status) due to uncertainty about how they would be evaluated under the proposed rule.

Finally, when projecting the change in the number of immigrants in the United States and their composition, it is critical that DHS provide a realistic assessment of immigration officials’ ability to accurately predict whether an individual applying for status adjustment or entry would or would not receive a benefit and whether that prediction can realistically take into account the thresholds in the proposed rule designed to disregard small amounts of benefit receipt. The proposed rule is premised on the ideas that immigration officials can make accurate predictions, that excluding individuals who receive benefits in as little as a single year at some point in the future is good for the nation overall, and that if accurate predictions are not possible, the resulting errors will not be harmful to the nation. Yet DHS presents no analysis to support these premises.

2. Proposed rule needs to analyze the economic costs incurred as a result of increased denials of status adjustment and entry under the rule

Once DHS has more fully detailed and quantified the scope and scale of denials and fear of denials under the proposed rule and the ways in which immigration officials may have difficulty perfectly predicting benefit receipt (as well as the implications of those errors), it should then draw on the large economic literature on the economic effects of immigration to estimate the economic costs and any asserted benefits associated with estimated changes in the size and composition of the
immigrant population that would arise under the proposed rule. Section II.F of our comments discusses both data and research on the economic impacts of immigrants.

These impacts go well beyond the much-studied impacts of immigration on wages and employment. As summarized in the 2017 NAS report:

Empirical research in recent decades has produced findings that by and large remain consistent with those in *The New Americans*. When measured over a period of more than 10 years, the impact of immigration on the wages of natives overall is very small. However, estimates for subgroups span a comparatively wider range, indicating a revised and somewhat more detailed understanding of the wage impact of immigration since the 1990s. To the extent that negative wage effects are found, prior immigrants — who are often the closest substitutes for new immigrants — are most likely to experience them, followed by native-born high school dropouts, who share job qualifications similar to the large share of low-skilled workers among immigrants to the United States. Empirical findings about inflows of skilled immigrants, discussed shortly, suggest the possibility of positive wage effects for some subgroups of workers, as well as at the aggregate level.

The literature on employment impacts finds little evidence that immigration significantly affects the overall employment levels of native-born workers. However, recent research finds that immigration reduces the number of hours worked by native teens (but not their employment rate). Moreover, as with wage impacts, there is some evidence that recent immigrants reduce the employment rate of prior immigrants — again suggesting a higher degree of substitutability between new and prior immigrants than between new immigrants and natives.

…With so much focus in the literature on the labor market (and much of this on the short run), other economic consequences — such as the role of immigrants in contributing to aggregate demand, in affecting prices faced by consumers, or as catalysts of long-run economic growth — are sometimes overlooked by researchers and in policy debates. By construction, labor market analyses often net out a host of complex effects, many of which are positive, in order to identify direct wage and employment impacts.

The contributions of immigrants to the labor force reduce the prices of some goods and services, which benefits consumers in a range of sectors including child care, food preparation, house cleaning and repair, and construction. Moreover, new arrivals and their descendants are a source of demand in key sectors such as housing, which benefits residential real estate markets. To the extent that immigrants flow disproportionately to where wages are rising and local labor demand is strongest, they help equalize wage growth geographically, making labor markets more efficient and reducing slack.

Importantly, immigration is integral to the nation’s economic growth. Immigration supplies workers who have helped the United States to avoid the problems facing stagnant economies created by unfavorable demographics — in particular, an aging (and, in the case of Japan, a shrinking) workforce. Moreover, the infusion by high-skilled immigration of human capital has boosted the nation’s capacity for innovation, entrepreneurship, and technological change. The literature on immigrants and innovation suggests that immigrants raise patenting per capita, which ultimately contributes to productivity growth. The
prospects for long-run economic growth in the United States would be considerably dimmed without the contributions of high-skilled immigrants. (NAS 2017 pages 4-7)

The discussion in Section II.F expands on some of these points and adds others, including:

- Immigrants, even those who are not currently well paid, work at a high rate.
- Immigrants perform work that is important in their communities and in the economy. Even the least educated immigrants enjoy high employment levels, suggesting that they meet an important labor market need.
- Immigrants contribute in ways that are not captured in their wages. Their greater willingness to move makes labor markets function more efficiently and they provide skills that complement those of native workers.
- Immigrants’ children tend to be highly upwardly mobile, completing far more education than their parents and acquiring an occupational profile similar to other Americans.

Neither policymakers nor the public can accurately evaluate the pros and cons of the proposed rule without an actual analysis of the impacts on employment, earnings, employers, economic growth, productivity, sector-specific impacts, and all the other factors discussed in the NAS reports and related literature. DHS currently ignores this body of evidence and potential costs entirely. DHS should incorporate an understanding of these factors and others discussed at Section II into its evaluation of the impacts of the proposed rule. And such an evaluation should certainly be included in any discussion of the costs and benefits of the proposed rule.

DHS’s analysis of the economic impacts of the proposed rule should examine the economic effects of both denials and fear of denials. For example, U.S. productivity and economic growth would be adversely affected if immigrants whose skills would complement the existing U.S. labor force were discouraged from seeking admission or if lawful permanent residents are hesitant to travel abroad for productivity-enhancing education or experience.

This analysis should also take into account the impact of the proposed rule on the age distribution of the United States.

And the analysis needs to take into account the evidence on the upward mobility of immigrants and the children of immigrants. Evidence on the substantial upward mobility of immigrants is reviewed in Section II.F.(7). That review shows, for example, that the children of immigrants attain far more education than their parents attained and, thus, have significantly higher potential earnings, and that economic mobility is not limited to the children of immigrants, with immigrants themselves seeing significant income gains over time. But while there is a rich academic literature related to the upward mobility of immigrants themselves and their children, the proposed rule lacks any discussion of this research and how it would affect a full accounting of benefits and costs of the proposed rule.

Finally, the analysis also needs to take into account the impact of errors on the part of immigration officials. As discussed earlier, there is significant doubt that even if immigration officials could predict future benefit receipt perfectly, the country would be better off keeping such individuals out. The NPRM needs to do far more to analyze and document those supposed benefits. But DHS provides no grounds for the premise that immigration officials will be able to
accurately predict who will receive one or more of the listed benefits above the thresholds. Many of those who may excluded under the proposed rule because of officials’ inability to predict the future accurately (as well as many of those excluded who may receive some benefits in the future) would be net contributors to the country’s economy and public finances, particularly when their children’s contributions are considered.

The U.S. remains a country with a dynamic economy and opportunity for upward mobility, educational attainment, creativity, and entrepreneurship — particularly for immigrants, who show greater upward mobility than U.S.-born citizens. If individuals were removed or kept out of the country based on an over-broad definition of public charge as well as inaccurate predictions by immigration officials, the nation would lose out on workers it needs, including those who care for seniors and clean our offices as well as those who start businesses, go to college, and have children who go on to be everything from teachers to inventors to business leaders. These are costs to the economy that policymakers and the public should understand before such a sweeping change is made to our immigration system.

The premises of the proposed rule appear to be that immigration officials: a) will be able to predict which individuals seeking entry or status adjustment will receive a benefit at some point in the future with a reasonable degree of accuracy, b) by accurately predicting future benefit receipt, will be able to keep out or remove such individuals from the United States, and c) will thereby generate a net positive for the economy and government budgets over the long run.

There appear to be no grounds for these assumptions; if there are, DHS should justify them. That justification is lacking in the current NPRM. This deficiency is particularly glaring in sections of the NPRM that purport to lay out the costs and benefits of the proposed rule, such as the portion of the Executive Summary titled “Costs and Benefits” and the section titled “Cost-Benefit Analysis.”

D. DHS provides no estimates of the overall impact of immigrants denied entry or status adjustment to public finances

The NPRM inaccurately claims that there is a lack of academic literature and economic research examining the link between immigration and public benefits, citing a single source for that claim. In fact, the 2017 National Academy of Sciences report devotes three chapters to this question (chapters 7, 8, 9). That analysis, in fact, represents an updating and improvement on similar material in a prior NAS report.

Key findings from the NAS Report that should be reflected in any cost-benefit analysis or general statement of DHS’s justification for the proposed rule include:

All population subgroups contribute to government finances by paying taxes and add to expenditures by consuming public services — but the levels differ. On average, individuals in the first generation are more costly to governments, mainly at the state and local levels, than are the native-born generations; however, immigrants’ children — the second generation — are among the strongest economic and fiscal contributors in the population. Estimates of the long-run fiscal impact of immigrants and their descendants would likely be

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142 P. 51235
more positive if their role in sustaining labor force growth and contributing to innovation and entrepreneurial activity were taken into account. (p. 7)

Viewed over a long time horizon (75 years in our estimates), the fiscal impacts of immigrants are generally positive at the federal level and negative at the state and local levels. State and local governments bear the burden of providing education benefits to young immigrants and to the children of immigrants, but their methods of taxation recoup relatively little of the later contributions from the resulting educated taxpayers. Federal benefits, in contrast, are largely provided to the elderly, so the relative youthfulness of arriving immigrants means that they tend to be beneficial to federal finances in the short term. In addition, federal taxes are more strongly progressive, drawing more contributions from the most highly educated. (p. 11)

As the 2017 NAS report explains, estimates of the present value of the net fiscal impact associated with a new immigrant vary widely, depending on several assumptions, and the report provides results that capture that variation (Table 8-12). Such variation is germane to providing a range of uncertainty in a cost-benefit analysis, but the NAS report clearly demonstrates that a fiscal analysis is indeed feasible.

For example, the report finds that under long-term assumptions used by the Congressional Budget Office, the total fiscal impact of a new immigrant who most resembles recent immigrants in terms of average age and education creates a positive fiscal balance flow to all levels of government, with a net present value discounted at 3 percent of $259,000. The report attributes $173,000 of this total impact to the immigrant as an individual and $85,000 to that immigrant’s descendants. Other scenarios in Table 8-12 show that “net fiscal impacts vary by an immigrant’s age at arrival and level of education. As one might expect, the net fiscal impact is less positive (or more negative) when the immigrant arrives during youth or at retirement ages,” according to the report.

Here, too, the question of the predictive skill of immigration officials making public charge determinations is important. If immigration officials’ capacity to make accurate predictions about benefit receipt is limited, then those excluded under the proposed rule will more closely mirror typical immigrants (many of whom receive benefits at some point in their lives and have high levels of employment, work in important occupations, and are net fiscal contributors).

E. Analysis needs to consider extent and costs of family separation

As noted, the likely impact of the proposed rule would be that more people would be denied permission to remain legally in the U.S., more people would be denied entry into the U.S., and more lawful permanent residents who have left the country for more than six months would be denied reentry on the basis of being deemed a public charge.143 This, in turn, would increase family separation, as many of those denied entry, change of status, or reentry will have families already in the U.S., including children. The discussion of the costs of the proposed rule in the “Cost Benefit Analysis” and discussion of “Costs and Benefits” in the Executive Summary fail to mention this impact and the harms that would flow from it.

143 Section VI.A.
A proper evaluation of the proposed rule — and especially any discussion of its costs and benefits — should consider the extent to which it would increase the number of children separated from their parents and then evaluate the immediate and long-lasting impacts on children in the U.S. from increased family separation and fear of family separation, including impacts on their future health and productivity and ability to contribute to their communities. These impacts can flow from factors including:

- Children being deprived of their own parents’ care and needing to live with other family members or family friends who are unable to provide them with the same parental care.
- Children experiencing separation from their parents as a source of long-term stress and trauma.
- Children living in communities affected by family separation internalizing fear and anxiety due to their potential separation from their own parents.
- Children suffering from lack of financial stability due to their separation from a parent who was the sole or primary earner of their household.

To understand and set out an evaluation of the scope and scale of the harm to children from family separation and fear of family separation, DHS should consult the substantial body of public health research on the immediate and lasting impacts of adverse childhood experiences. These are “potentially traumatic experiences and events, ranging from abuse and neglect to living with an adult with a mental illness. They can have negative, lasting effects on health and well-being in childhood or later in life.” The fear of separation, the event of separation, and being deprived of a parent’s presence and parenting are undeniably traumatic, and there is substantial evidence that family separation can inflict profound long-term harm on children — many of whom will be U.S. citizens — who experience it. DHS should consult that research, which includes:

- The evidence and research collated by the Society for Research in Child Development that family separation has long-term negative effects on children’s health and psychological and social well-being, which are not easily reversed. As SCRD concludes, and as DHS’s appraisal of the proposed rule should acknowledge: 

  The scientific evidence is conclusive. Parent-child separations lead to a host of long-term psychological, social, and health problems that are not necessarily resolved upon reunification.[…] The science is clear: policies that separate immigrant families upon entry to the U.S. have devastating and long-term developmental consequences for children and their families.

- The broader literature documenting the array of serious harms from adverse childhood experiences. DHS should use this literature to detail the full range of costs, including public


health costs, that could flow from family separation. For example, a summary of the research on adverse childhood experiences explains that such experiences can cause stress reactions in children, including feelings of intense fear, terror, and helplessness. When activated repeatedly or over a prolonged period of time (especially in the absence of protective factors), toxic levels of stress hormones can interrupt normal physical and mental development and can even change the brain’s architecture. ACEs [adverse childhood experiences] have been linked to numerous negative outcomes in adulthood, and research has increasingly identified effects of ACEs in childhood. Negative outcomes associated with ACEs include some of society’s most intractable (and, in many cases, growing) health issues: alcoholism, drug abuse, depression, suicide, poor physical health, and obesity. There is also some evidence that ACEs are linked to lower educational attainment, unemployment, and poverty. In childhood, children who have experienced ACEs are more likely to struggle in school and have emotional and behavioral challenges.

- Findings from a report highlight that harsh immigration policy has several impacts: poorer child health, poorer child behavioral outcomes, poorer child educational outcomes, poorer adult health and shorter lifespans, higher rates of poverty, and diminished access to food. Substantial evidence suggests that all of these are likely to occur as direct and indirect effects of family separation and greater fear and anxiety.

- The findings from the literature on adverse childhood experiences, which note the strongly cumulative nature of the damage inflicted on children by such events. This is particularly relevant to family separation in at least two ways:
  - As Child Trends notes, the research finds that, “more important than exposure to any specific event of this type is the accumulation of multiple adversities during

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childhood, which is associated with especially deleterious effects on development.” 153 DHS should consider that the family separation caused by its proposed public charge rule is likely to affect children in families that experience periods of socioeconomic vulnerability, given that the proposed rule targets those likely to receive benefits at some point in the future. And, denying a parent the ability to remain or come to the U.S. may make it more likely that the children suffer economic deprivation because those parents, even if they earn low wages, are likely to raise the economic security of the children. Moreover, immigrant families often have endured stressful events related to leaving their country of origin (and related to the reasons they left).

- DHS should acknowledge that, given the cumulative nature of the harm flowing from adverse childhood experiences, parental separation may be especially damaging because it removes one of the buffers against the impacts of other adverse experiences. As Child Trends notes, the research suggests that “the mechanism responsible for [the harms caused by ACEs] — toxic levels of stress — can be substantially buffered by a stable and supportive relationship with a caregiver.” 154 Family separation removes that buffer.

- Research that documents the intense and harmful anxiety and trauma that children in immigrant families may experience in fearing family separation, and that this fear may itself create many of the immediate and long-lasting harms associated with adverse childhood events. This research focuses on prior immigration policies that create the fear of family separation (such as from deportation), but is relevant to the proposed rule which would also result in increased separations and fear. Examples from this body of research includes:

- The Society for Research in Child Development (SRCD)’s recently published review of the research on the effects of fear of parental deportation on children, which DHS should consult and also review the underlying research that SRDC cites. This evidence collectively highlights the adverse impacts that recent anti-immigration policy and overall threatening political climate are having on children of immigrant families. SDRC explains, based on that evidence, that, “the threat of familial separation and chronic uncertainty regarding familial safety is also experienced by many Latino children in immigrant households as psychological violence.” 155 In other words, an immigrant child does not need to have their parent separated from them to experience the trauma, fear, and stress that comes with such policies. 156 SRDC’s report provides evidence of recent changes in the DHS guidelines for approaching immigration. The agency recently stopped prioritizing deportation


154 Ibid.


of immigrants that posed a real threat to national security and instead began arresting
individuals in “sensitive locations” such as schools, medical centers, and churches.
The proposed rule would only worsen the fearful environment in immigrant
communities.

Reactions to this harmful climate by immigrant families fearing separation include
social isolation and worsened school performance by their children. The report
notes: “Threat and uncertainty regarding familial safety are linked to children’s ability
to attend school, focus, and learn.” In addition to this, children of immigrant families
also show “lower utilization of healthcare services, social services, and public health,
nutrition, and educational programs.” This proposed rule feeds into a climate of fear.
DHS should consider the negative educational, psychological, and health impacts
that it would have on citizen children of immigrant families in the costs of the
proposed rule.

- CBPP’s recent report, which cites highly relevant research that DHS should
  review and incorporate into its assessment of the impacts of the proposed
  rule.\(^\text{157}\) The report provides an overview of recent evidence of high levels of stress
  and fear among immigrant families:

  Numerous articles and studies have documented the growing fear, stress, and
  hardship among immigrant families…

  Although immigrant parents often try to shield their children from these
  issues, children apparently are experiencing acute stress as well, either directly
  or more generally through their parents. For example, nearly 90 percent of
  school administrators representing over 730 schools in 12 states noted
  observing behavioral or emotional problems with their students that appear
  related to concerns about immigration enforcement, a survey done between
  October 2017 and January 2018 found.\(^\text{158}\) These behavioral problems usually
  included crying, refusing to speak, being distracted, and acting anxious or
  depressed…\(^\text{159}\)

  Fear of familial separation has disrupted children’s daily routines as well. In
  fact, many citizen children with undocumented parents feel the need to take
  on “parent-like” roles to protect their parents. These children are thus
  exercising extreme caution and hyper-vigilance within their communities
  and withdrawing themselves. For example, children are reportedly more fearful
  and distrusting of police, possibly because they cannot distinguish

\(^\text{157}\) Danilo Trisi and Guillermo Herrera, “Administration Actions Against Immigrant Families Harming Children
Through Increased Fear, Loss of Needed Assistance,” Center on Budget and Policy Priorities, revised May 15, 2018,
https://www.cbpp.org/research/poverty-and-inequality/administration-actions-against-immigrant-families-harming-
children.

\(^\text{158}\) Patricia Gándara and Jongyeon (Joy) Ee, “U.S. Immigration Enforcement Policy and Its Impact on Teaching and
Learning in the Nation’s Schools,” UCLA Civil Rights Project, February 28, 2018, https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/u.s.-immigration-

\(^\text{159}\) Ibid.
confidently between the roles of immigration officers and local law enforcement…\textsuperscript{160,161}

The climate of fear and anxiety extends beyond the unauthorized population, in part due to confusion about existing policy or concerns about future policy changes. In a recent survey of 213 Latino parents of adolescent children, published in the *Journal of Adolescent Health*, 33 percent reported changes in daily routines, 39 percent avoided medical care, police, and services, and 66 percent feared familial separation.\textsuperscript{162} This fear extended across the immigrant population, regardless of legal status…

In addition, 23 percent of a representative sample of Los Angeles County residents were afraid that they, a family member, or a friend would be deported because of their immigration status, a poll released in April 2018 found. Of those, 71 percent said that enrolling in a government health, education, or housing program would raise the risk of deportation…\textsuperscript{163,164}

The CBPP report also explains, drawing on substantial evidence that this fear can have detrimental effects on children:

Studies have begun to document harmful effects of the Administration’s immigration policies on children’s mental health and well-being.\textsuperscript{165} Experts note that rising fear is affecting children’s behavior and could do lasting harm. Immigrant parents and pediatricians who serve immigrant communities have indicated that growing fear and anxiety among children are contributing to behavioral issues, psychosomatic symptoms, and mental


health issues, according to interviews during the fall of 2017. For example, children are experiencing problems sleeping and eating, restlessness and agitation, headaches, nausea, panic attacks, and depression. Some pediatricians mentioned an increase in school reports of attention-deficit/hyperactivity disorder as well, which they believe may stem from anxiety or stress. Children also may not be receiving needed care and attention if their parents are likewise experiencing significant stress and anxiety.

Previous research has shown that fear and stress about immigration enforcement aren’t limited to unauthorized immigrants. Sociologist Joanna Dreby finds that children in immigrant families, regardless of their immigration status or whether a family member has been deported, were prone to emotional distress, fears of separation, and conflating immigration with illegality...

Experts warn that the fear may be severe enough in some cases to physically harm children, such as by altering the architecture of their developing brains. Young children who live in severely stressful situations, and whose parents or caregivers cannot effectively cushion against this stress, may experience what is called “toxic stress.” This stress can alter the physical growth and functioning of children’s brains in ways that impede their ability to thrive in school and develop the social and emotional skills to function well in adulthood, according to researchers at Harvard’s Center on the Developing Child.


167 Ibid.


High childhood stress has been linked to “a host of inflammatory diseases later in life” such as early-onset arthritis, according to Kathleen M. Ziol-Guest, Greg Duncan, and their colleagues.\textsuperscript{172}

For this reason, the current climate of fear puts children at risk of adverse health effects and poor outcomes. In fact, in January 2017, the American Academy of Pediatrics (AAP) assessed President Trump’s immigration executive orders as harmful for the health of children in immigrant families.\textsuperscript{173}

- **An Urban Institute report that sets out more evidence of the short- and long-term harm from family separation on citizen children of non-citizen adults.**\textsuperscript{174} The report’s findings include: “Psychologists interviewed for the study associated this pervasive sense of insecurity and the anxiety it produced in children with conditions ranging from separation anxiety to attachment disorder and post-traumatic stress disorder.” They also find that in the short term, the educational performance of these children worsens, and in the long term, mental health issues such as depression can be exacerbated.\textsuperscript{175} DHS should review and incorporate an evaluation of these negative effects of family separation into its justification for the proposed rule.

- **The academic research that examines the impact that both personal experiences of deportation and the existence of deportation in broader communities has on children in immigrant families.** It finds, “(1) parents with higher levels of legal vulnerability report a greater impact of detention/deportation on the family environment (parent emotional well-being, ability to provide financially, and relationships with their children) and children’s well-being (child’s emotional well-being and academic performance) and (2) parents’ legal vulnerability and the impact of detention/deportation on the family predict outcomes for children.”\textsuperscript{176} The analysis of the proposed rule’s impact should take the fear of separation into account.


\textsuperscript{175} \textit{Ibid.}

• Research that shows that family separation can weaken the financial stability of U.S. resident families. DHS should consult the literature documenting the harm that this can have on U.S. resident children in those families, including over the long term. For example, in a report about the effects of immigration enforcement on children, the Urban Institute finds that following separation from their parents, children face economic hardship, particularly when a breadwinner is removed. The loss of income led is associated with housing instability, food hardship, and significant changes in child behavior.177

In the case of this proposed rule, the parent who is forced to leave the country or prohibited from entering could represent a lost opportunity to improve the family’s financial status. The harms flowing from family separation and fear of it would be borne most intensely by the children in these families, and, as the research suggests, may be long-lasting, and should be accounted for in the proposed rule.

DHS should also consider and acknowledge the potential for broader harm throughout immigrant communities and the nation. These include economic costs, as some children who undergo adverse childhood experiences may ultimately be less successful and productive in the labor force as a result, for reasons that include the disruption to their schooling due to the impacts of those experiences. Further, costs will be borne by parents or immediate family members who are left to parent without the financial and emotional support of the parent who is unable to join, remain with, or rejoin the family unit.178,179 And, schools and communities, including health care providers, may require additional training and resources to adequately support children who experience fear of family separation or actual family separation according to best practices.

F. DHS’ evaluation of the extent to which immigrant families forgo benefits out of fear of negative immigration consequences is incomplete and inaccurate

As discussed in Section IV. A-B, one of the key risks of the proposed rule is that large numbers of individuals in immigrant families — including U.S. citizen children — would forgo needed health, nutrition, and housing assistance out of fear that receiving such assistance would result in a negative immigration-related consequence. As discussed in Section IV.C, significant short- and long-term harm can arise from such a chill effect. Yet despite these important negative impacts, the NPRM fails to incorporate a sound qualitative or quantitative assessment of the extent to which the proposed rule would cause people to forgo needed assistance and of the impacts of those forgone benefits. DHS’s inadequate estimate of chill is primarily set out in the “Cost-Benefit Analysis”


section and repeated in truncated form on p. 51117 in the Executive Summary section titled “Costs and Benefits.”

To estimate the extent to which the proposed rule would reduce the receipt of benefits, DHS first estimates the five-year average number of people who adjusted to LPR status as compared to the total non-citizen population, and finds that 2.5 percent of non-citizens apply to adjust status annually. Then, DHS applies that percentage to an estimate of the population of people who are in households that include foreign-born non-citizens and who receive public benefits covered by the proposed rule.

DHS acknowledges that the number of people who could forgo benefits as a result of the proposed rule could be as many as three times the one-year estimate, “Because DHS plans to heavily weigh the receipt of public benefits within the past 36 months as a negative factor, individuals may begin to disenroll or forgo enrollment in public benefits programs as early as three years prior to applying for adjustment of status.”

1. DHS basic estimates are deeply flawed

DHS’s approach results in a faulty and unsound estimate of the likely reductions in benefit receipt caused by the proposed rule. Most importantly, it does not incorporate the fact that the group of people who would likely forgo benefits out of fear of negative immigration consequences would extend far beyond the population directly affected by a public charge determination under the proposed rule. Many individuals and households who will not or are highly unlikely to face a public charge determination may forgo benefits. As explained in Section IV. B, given that many individuals are not eligible for benefits at the time they seek status adjustment or lawful entry, the primary impact on benefit receipt would come from individuals who are eligible for benefits but fear that receipt would lead to a negative immigration consequence, including many individuals who will never face (or likely never face) a public charge determination.

As explained above at Section IV, the scope of chill due to fear, confusion, and other factors would likely be significantly larger than discussed in the NPRM, which fails to take this broader effect into account. Immigration rules are confusing; many immigrants not only have difficulty understanding them but worry that they will change — a legitimate concern, given recent efforts to change immigration rules substantially. The message of the proposed rule is quite clear: the federal government is making the case that when immigrants receive benefits, they hurt the country and do not represent good members of our communities. Against this backdrop, many immigrants might conclude that the safest course of action is to forgo benefits even if they are unlikely to face a public charge determination (or, indeed will never face one, as is the case for U.S. citizen children), even if doing so puts themselves or their children at risk of lacking adequate health care, housing or nutrition. Immigrants have often sacrificed a tremendous amount to come to the U.S. to create a better life for themselves and their children; against this backdrop, they may conclude that benefit receipt is simply too risky.

This means that the chill effect may well extend:

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180 P. 51266
• to programs not directly covered by the proposed rule; and
• to people and families beyond those directly affected by the proposed rule.

There may be confusion about the extent to which benefit receipt by children, other related and unrelated household members, or even extended family members not living in the household could negatively impact immigration determinations of other family members. Likewise, lawful permanent residents may think the rule would apply to them when they seek to become naturalized citizens. U.S. citizens or LPRs who have family members abroad who wish to enter the U.S. could also believe that benefit receipt could affect family members’ immigration prospects. Others who might believe that benefit receipt could harm themselves or others include: family members of immigrants — including U.S. citizens — who are planning to adjust their status, and LPRs and U.S. citizens who fear their status could be revoked.

For the public and policymakers to understand the likely impact of the proposed rule, they need a complete and accurate analysis of both the extent and consequences of this chill effect. Thus, DHS should review Section IV. A-D of these comments, which evaluates the potential extent and scope of chill in more detail; review the literature that this section references (and attached in the Appendices to this comment); incorporate all of the above into a proper evaluation of the scale and scope of chill; and incorporate all of the above into a quantitative estimate of the forgone enrollment due to chill.

To complement this information in conducting an adequate evaluation and estimate of the scale and scope of chill, DHS should take into account and incorporate into its evaluation and estimate:

• The ample evidence that fear and confusion have already led to chill, as evidenced by households disenrolling or forgoing enrollment in programs, even though the proposed rule has not been finalized and is not currently proposed to be retroactive. The fact that there already has been a chill effect underscores the concerns in immigrant communities and the lack of trust of the federal government’s assurance in the proposed rule that changes would not be retroactive. DHS should take into account the numerous reports of people dropping out of benefit programs such as WIC, SNAP, and Medicaid due to fear that receiving such benefits now will cause them to fail a future public charge determination and thereby ruin their families’ chances of staying (or reuniting) in the United States. ¹⁸¹ The discussion above at Section IV elaborates.

• The literature and evidence on chill drawn from the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996. DHS’s analysis misapprehends the relevance of reductions in enrollment following changes to eligibility for public benefits under the 1996 law. ¹⁸² DHS simply dismisses the research around enrollment declines after the law passed

¹⁸² P. 51266

- The PRWORA experience is highly relevant. Research shows that following PRWORA, enrollment declined both in programs whose eligibility PRWORA did not change and among individuals and families that remained eligible (that is, who were unaffected by the eligibility changes but were fearful of receiving benefits). This suggests that even when programs or people enrolled in them may not be directly affected by a policy change, confusion, fear, or similar mechanisms may lead families to disenroll or forgo enrollment.\footnote{Steven J. Haider \textit{et al.}, “Immigrants, Welfare Reform, and the Economy,” \textit{Journal of Policy Analysis and Management}, 2004, pp. 745-764, \url{https://msu.edu/~haider/Research/2004-IPAM-180.pdf}.}

- DHS should therefore consult and incorporate in its analysis this study and the other highly relevant literature on PRWORA, discussed above. (See Section IV.)

- Published attempts to quantitatively estimate chill should be consulted and discussed, rather than ignored. These include:
  - Other relevant literature referenced at Section IV.

- Factors specific to the proposed rule’s content, the way in which it has been proposed, and the context in which it has been promulgated are likely to increase fear, confusion, and chill. DHS should discuss and incorporate these factors into its assessment and estimate of the scope and scale of potential chill, including that:
  - \textit{Multiple, widely reported leaked draft versions of the proposed rule were different in scope.} This is likely to increase fear and confusion about what would be covered in the final rule, and increase fear that changes in line with the leaked drafts might be incorporated in the future.\footnote{Nick Miroff, “Trump proposal would penalize immigrants who use tax credits and other benefits,” \textit{Washington Post}, March 28, 2018, \url{https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?utm_term=.d0eac2f9e153}.}
Some of the benefits included are closely linked with or similar to others not currently included. For example, Medicaid, which is included, is closely intertwined with the Children’s Health Insurance Program (CHIP), which is not included. Most participants can be expected to have a hard time distinguishing between a program funded by Medicaid and one funded by CHIP. (As discussed in Section V, we strongly oppose adding CHIP to the programs included in the proposed rule.) Similarly, while SNAP is included in the rule’s definition of public charge but other nutrition programs (like WIC and school meals) are not, many families may not understand the distinction and choose to forgo all nutrition-related benefits.

The proposed rule asks for comments about the advisability of including benefits not presently included, which is likely to create further confusion about which benefits are covered. Regardless of which benefits are covered in any final rule, such deliberations may add to the sense that the Administration may try to further broaden the scope of any final rule over time. For example, the proposed rule does not presently include CHIP, but the notice announcing the proposal explains that the Administration is considering including it, potentially adding to confusion and fear that CHIP could be incorporated later.

Confusion and fear among immigrant families claiming public benefits is already high. In such a climate, families may be confused about what the proposed rule does and/or adopt very risk-averse behavior given their strong interest in ensuring that their families can remain together in their U.S. communities.\(^\text{189}\)

The chill effect is likely to be larger because families know that other immigration policy changes recently put in place have resulted in – or have been intended to result in – reducing individuals’ ability to enter the U.S. or remain here. Those other changes include:\(^\text{190}\)

- Stepping up immigration arrests in line with the President’s January 2017 executive order listing virtually any immigrant without legal immigration status as a priority for deportation.\(^\text{191}\) This is a departure from the prior policy, which identified specific categories of undocumented immigrants as priorities.

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• Declaring an end to the Deferred Action for Childhood Arrivals (DACA) program, which shielded about 800,000 young undocumented immigrants from deportation and permitted them to legally work and drive in the United States. (Court injunctions have temporarily halted the Administration action.)

• Announcing that it will end Temporary Protected Status (TPS) for about 390,000 immigrants from Central America, Haiti, Nepal, and Sudan. An estimated 273,000 U.S.-born children whose parents are TPS recipients from El Salvador, Honduras, and Haiti will have to leave or separate from their parents due to this policy change.

• Endorsing legislation that would harm immigrant communities, including the Reforming American Immigration for a Strong Economy (RAISE) Act, which would deny basic food and medical assistance to family members of new immigrants; the No Sanctuary for Criminals Act, which would bar federal grants from sanctuary cities; and Kate’s Law, which would increase penalties for those charged criminally for reentry into the United States.

• Using rhetoric that has amplified fear and stress among immigrants both directly and indirectly by fomenting discriminatory acts against them.


In addition, the President signed into law a tax bill denying the Child Tax Credit to roughly 1 million low-income children in working families who lack a Social Security number even though their parents pay payroll taxes and other taxes. Families losing the CTC may believe that they have similarly become ineligible for other benefit programs.

Beyond DHS’ failure to adequately evaluate and incorporate an estimate of a potentially very large chill effect, its estimate of disenrollment and forgone enrollment among those directly affected by the proposed rule is faulty in a number of other ways that should be corrected to provide an adequate basis for evaluating the impacts of the proposed rule. These unsound elements of the estimate include:

- There is no attempt to estimate the number of individuals and families who may forgo benefits despite having LPR status but who may be concerned that they could face a public charge determination if they need to leave the country for more than six months and return.
- DHS employed a cursory and inadequate method for translating its estimate of the number of disenrollments and forgone enrollments from programs affected by the proposed rule into a dollar impact.

For example, to estimate per-enrollee Medicaid dollars for the immigrant families who disenroll or forgo enrollment, DHS uses a national average Medicaid per-enrollee dollar amount. This is a poor proxy of the per-enrollee dollar impact for those individuals who disenroll or forgo enrollment because of the rule. Per-enrollee Medicaid costs vary significantly by age and other characteristics, and the population that disenrolls or forgoes enrollment because of the rule may differ quite substantially from the entire U.S. Medicaid population — so the per-enrollee Medicaid dollar amounts for the two populations may differ quite substantially as well.

DHS appears somewhat aware of this, with the footnote to Table 50 stating, “Note that per enrollee Medicaid costs vary by eligibility group and State.” Nevertheless, DHS does not go on to either explain how those per-enrollee costs vary substantially by eligibility group, demographic, or other characteristics, or discuss how the per-enrollee dollar amount due to disenrollment or forgone enrollment among the immigrant family population affected by the proposed rule would differ from the national average. Those differences could be large. For example, the immigrant population potentially affected by the rule is likely to be substantially younger than the overall Medicaid-enrolled population, as explained by research that DHS should consult.

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This failure is even more glaring because a more accurate average dollar amount per Medicaid disenrollment or forgone enrollment for the population affected by the proposed rule is entirely estimable. Kaiser provides one example of an approach.\(^{199}\) As the Kaiser analysis notes, the SIPP data that it uses provide information on age and various other characteristics, which can be used to determine a more accurate per-enrollee Medicaid cost.

DHS should redo this part of the analysis to calculate a per-enrollee dollar amount for the population specifically affected by the proposed rule — both those directly targeted and those who may disenroll or forgo enrollment because of chill — rather than using a national average taken from a very different total population. Also, it should undertake a similar analysis for the other programs that are affected by the proposed rule or might experience disenrollment or forgone enrollment due to chill.

DHS specifically requests comment on one part of its calculation of the population directly affected by the proposed rule: whether it should look at people who received covered benefits in one year or over a prior three-year period.\(^ {200}\) On this narrow question, DHS should look at a three-year period, as the proposed rule actually considers a period far beyond one year. Indeed, benefits received within the prior three years are a heavily weighted negative factor. Receipt even further in the past can also be considered as a negative factor.

But simply using the three-year calculation would not address the many other inadequacies of the disenrollment/forgone enrollment calculation, which render DHS’ evaluation of the proposed rule incomplete and inaccurate. DHS needs to redo this calculation much more fundamentally to address these inadequacies, as described above.

2. Calculations of the state share of benefits forgone are cursory and inadequate

Not only are DHS’s total dollar changes in program amounts due to disenrollment and forgone enrollment inadequately calculated, as described above, but DHS fails to make any serious attempt to quantify the state share of payments flowing from disenrollment and forgone enrollment.\(^ {201}\) An adequate evaluation of the proposed rule’s impact on states should be part of any sound justification for the rule.

In the footnote to Table 54, DHS notes that:

The amount of transfer payments presented includes the estimated amounts of transfer payments to the federal government and to state governments from foreign-born non-citizens and their households who may disenroll or forgo enrollment in public health benefits programs. DHS assumes that the state governments’ share of the total amount of transfer payments is 50 percent of the estimated total transfer payments to the federal government.

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\(^ {199}\) Ibid.

\(^ {200}\) P. 51269.

\(^ {201}\) These shares are discussed and calculated (cursorily, as noted in the text) in the “Cost-Benefit Analysis” section, and the shares restated in Table 1, p.51121.
government. For a breakout of the estimated total federal and state transfer payment amounts, see the summary table above at the beginning of the economic analysis (Table 36, Summary of Major Provisions and Economic Impacts of the Proposed Rule).

Table 36, in turn, states:

... total annual transfer payments of the proposed rule would be about $2.27 billion from foreign-born non-citizens and their households who disenroll from or forgo enrollment in public benefits programs. The federal-level share of annual transfer payments would be about $1.51 billion and the state-level share of annual transfer payments would be about $756 million.

DHS provides no factual basis for its assertion that the state share of the total transfer impact of the proposed rule would be 50 percent of the federal share. In fact, for each of the major programs that would be affected by disenrollment, the state share is knowable and calculable based on basic information sources that are readily available. DHS references these sources but then ignores them, substituting a 50 percent share without any explanation. DHS should undertake the proper analysis using readily available information that can be used to calculate state shares. This information includes:

- State Medicaid share
  DHS should use these actual state shares. DHS acknowledges they exist but ignores them entirely: stating, “Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases.” However, assuming that the state share of federal financial participation (FFP) is 50 percent.” DHS goes on to use 50 percent instead of factoring in the actual rates. DHS gives no reason for failing to use the available, actual rates.

- State SNAP costs
  DHS acknowledges that states share in the cost of administrative funding for programs but fails to estimate the impact. The NPRM states, “DHS was unable to quantify the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.” DHS should evaluate the total state impact from SNAP disenrollment and foregone enrollment:

  - An assessment of how sensitive state administrative costs are to SNAP caseloads. If those costs come largely from personnel and building costs, they may not be very sensitive to caseloads.
  - To the extent that state administrative costs are sensitive to SNAP caseloads, state-by-state administrative costs will be relevant. State administration costs for SNAP are

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202 P. 51268

Other impacts on states discussed at Section IV — including the costs of increased caseload churn, responding to inquiries related to the new rule, and modifying existing communications and forms related to public charge — should also be evaluated and incorporated in the discussion of state fiscal impacts.

An additional, and potentially substantial, impact on states from disenrollment and forgone enrollment will be the resulting effect on state revenues from changes in the level and composition of consumption. (See Section VI.G.(5).) These impacts should also be evaluated and estimated.

**G. DHS fails to adequately describe or estimate the potential harm caused when immigrant families forgo needed assistance due to the proposed rule.**

DHS’s discussion of the scope and scale of the impacts from people forgoing benefits due to the proposed rule is cursory. DHS offers only a very brief qualitative discussion, in which it lists some broad categories of potential harm in the section titled “Cost-Benefit Analysis”.

There are a number of consequences that could occur because of follow-on effects of the reduction in transfer payments identified in the proposed rule. DHS is providing a listing of the primary non-monetized potential consequences of the proposed rule below. Disenrollment or forgoing enrollment in public benefits program by aliens otherwise eligible for these programs could lead to:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.

DHS notes that the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community-based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forgo enrollment in public benefit programs. DHS requests comments on other possible consequences of the rule and appropriate methodologies for quantifying these non-monetized potential impacts.”

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203 P. 51270. The discussion of these harms in the Executive Summary section titled “Costs and Benefits” is even more truncated.
This is the entirety of DHS’ discussion of these categories of harm and is an inadequate evaluation of a set of entire classes of far-reaching costs that would result from the proposed rule. The scope and scale of each of these potentially substantial costs should be evaluated, drawing on the highly relevant empirical research available. Many of these harms are quantifiable based on that substantial existing research. The research and evidence that DHS should have consulted and used in attempting a proper evaluation of these costs includes studies produced by agencies in the Administration itself. These are discussed below.

Where DHS does not consider the research a sufficient basis for quantifying the harm, or even producing a range of estimates, it should explain why. Instead, the NPRM simply states that DHS is not monetizing these costs and does not explain why, leaving it to commenters to suggest “appropriate methodologies” for evaluating and monetizing these potential impacts. Furthermore, DHS fails to discuss entirely some categories of harm that would result from reduced enrollment under the proposed rule.

Illustrative examples are provided below. This is not a complete evaluation of the sort that DHS should itself undertake; instead, these examples demonstrate that there is an abundance of highly relevant research that DHS could have consulted and should now review and incorporate into its understanding and evaluation of proposed rule’s impacts.

1. Immediate and long-term harms, creating further long-term costs for individuals, families, communities, and the country

In Sections III-V. of this comment, we set out research identifying a variety of damaging immediate and long-term consequences for individuals and children that may come from forgoing various types of benefits. DHS should review this discussion and the research that it references and incorporate those findings into a proper evaluation of the costs of the proposed rule. The categories of costs identified by this research include (but are not limited to):

- **The long-term harm to children when their families forgo needed benefits.** Research shows that receipt of benefits such as SNAP and Medicaid can not only support healthier and more secure present circumstances for families, but also have positive long-term impacts on children’s health and educational outcomes. The proposed rule, by leading individuals and families to forgo benefits, therefore would likely reduce children’s future productivity and have a negative economic impact. Section IV.C. above discusses and refers DHS to the research suggesting that the negative impacts on children’s health and well-being from reduced enrollment in benefits can also reduce their likelihood of attaining educational qualifications and higher wages when those children are older. DHS should fully assess the potentially significant long-run harm to these children’s labor market outcomes. These long-run costs will depend in part on the expectation of these children’s success in the labor market absent the proposed rule, so this analysis should incorporate the evidence reviewed in Section II on the substantial upward mobility among children of immigrants.

- **The negative impacts on health from reduced participation in programs that support health, including Medicaid as well as other benefit programs.** Sections III and IV also document many of the health harms that the research suggests would occur if fewer people have health coverage through Medicaid, receive SNAP, and so on. These health harms — which themselves constitute a cost or impact of the proposed rule — in turn could prevent
people from staying healthy enough to work or from receiving the care they need to return to work. A host of harms related to likely poorer health should be considered. For example, as discussed at Section IV.G.(4), given the strong correlation between food insecurity and chronic health conditions, increasing food insecurity by restricting access to SNAP would likely raise health care costs, with some of those added costs shifted to clinics and other health care providers.

2. Monetization of harms

DHS’s cost-benefit analysis asks commenters to recommend “appropriate methodologies for quantifying these non-monetized potential impacts,” but DHS does not indicate what methodologies it has considered or rejected and why. Without knowing this, it is difficult to comment on DHS’s potential approach to monetization. Nevertheless, the following discussion provides some of the basic sources and literature that DHS can consult when evaluating whether and how these impacts might be monetized:

- Many of the impacts from forgone enrollment will be immediate and long-run health harms; there is an established literature on monetizing health harms that DHS should consult to develop a methodology for monetizing these impacts. For example, the Institute of Medicine (IOM) assembled a panel and published a report that explains whether and how health outcomes from regulations can be monetized. While DHS’s proposed rule does not directly regulate health and safety, it does have substantial health impacts, so the IOM volume on methodology is highly relevant for DHS to consult when considering methodologies for quantifying health impacts of the proposed rule. Past administrative practices and evaluations of the impacts of regulations also set out potential methodologies and sources to consider. DHS gives no indication that it has considered any of these approaches, and it should do so and explain whether and why they are appropriate.

- For some health costs and benefits, DHS should evaluate whether it can draw on the highly relevant body of literature related to quantifying and monetizing specific health-related impacts. One example is the substantial literature on quantifying and monetizing net benefits from prevention and treatment of communicable disease, as discussed in Section VI.G.(3) below. DHS can consult similarly relevant literature on other specific health harms caused by the proposed rule.


3. Costs associated with poorer prevention and treatment of communicable diseases

The proposed rule would cause harm from poorer prevention and reduced treatment of communicable diseases, yet DHS fails to adequately evaluate or quantify the serious consequences of this category of harm, which include (but are not limited to) likely loss of life. Instead, DHS states only a single bullet: “Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated.”

The NPRM gives no factual basis for understanding or weighing the types and severity of these costs. The bullet presumably refers to the fact that under the proposed rule, immigrant households would be chilled from receiving preventative and primary care through Medicaid, leading to lower rates of vaccination for communicable diseases and less uptake of primary care among that population. That in turn could lead to:

- Increased rates of contracting communicable diseases among those who forgo Medicaid receipt and lower levels of early detection, treatment, and containment of disease among those who forgo Medicaid. This is because individuals without health insurance may be less likely to seek out early primary care or treatment when they experience symptoms associated with communicable disease.

- Increased rates of communicable diseases among a broader set of households and communities (beyond those who forgo benefits). Such increases could occur particularly among the unvaccinated population, such as newborns and people with chronic illnesses, and those with weak immune systems, such as people with HIV and people receiving certain kinds of medical treatment.

There is a robust public health literature quantifying the net benefits of vaccination and primary care interventions to halt the spread of communicable diseases. The benefits include fewer deaths and chronic conditions (lower mortality and morbidity) due to vaccinations and early detection and treatment to reduce and halt the spread of childhood communicable disease. The benefits also include fewer large-scale outbreaks and the costs associated with such outbreaks. DHS’s cost-benefit analysis fails to draw upon this robust research, and so failed to explain the scale of the corresponding costs associated with poorer prevention and treatment of communicable diseases or weigh them adequately in considering and attempting to justify the proposed rule.

This section does not attempt to identify or summarize the extensive literature exhaustively, but gives examples from the literature demonstrating that DHS’s analysis ignores a substantial body of evidence that is highly relevant to understanding and quantifying the proposed rule’s cost. The literature includes:

- Extensive Centers for Disease Control (CDC) evaluations of major and proposed vaccination programs, including attempts to document their costs and benefits. These include “Benefits from Immunization during the Vaccines for Children Program Era — United States, 1994-
which is the basis for CDC’s estimate that “vaccinations will prevent more than 21 million hospitalizations and 732,000 deaths among children born in the last 20 years” and that, “According to analysis by the CDC, hospitalizations avoided and lives saved through vaccination will save nearly $295 billion in direct costs and $1.38 trillion in total societal costs.”

Costs considered by CDC include death, hospitalization, productivity loss from death and illness, and productivity loss from days off to care for sick children.

- The well-established finding in epidemiology and public health research that many of the benefits of vaccination are enjoyed by the community at large through “community immunity,” because “… a high level of vaccination coverage must be maintained for a community to benefit from the public health impact of indirect protection. This occurs when vaccinated people block the chain of disease transmission, which protects unvaccinated and under vaccinated people by limiting spread.”

- Literature on the broader social contributions of vaccination, including effects on health equity and the social integration of minority groups.

These examples show that DHS has a basis both for evaluating the proposed rule’s potential harm due to poorer prevention and treatment of communicable diseases, and for potentially quantifying that harm or giving a range of potential harm. Such an analysis could:

- Start with a more careful estimate of the number of people who would be chilled from receiving Medicaid, estimate the number of vaccinations thereby forgone, and from there, discuss and evaluate the costs of those forgone vaccinations based on the extensive research.

- Incorporate the costs of reduced early diagnosis and treatment of communicable diseases, drawing on similar extensive literature on mortality and morbidity from communicable diseases and the benefits of early detection, treatment, and outbreak containment.

- Consider factors specific to immigrant families that might increase the harms to such families of chilling access to preventative care and treatment for communicable diseases. For example, CDC research finds that children among some immigrant families are already less likely than

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the general population to be vaccinated. The literature suggests that this stems from the systematic barriers to immigrant families accessing health care generally (such as complex application processes compounded by language barriers) and lack of adequate outreach to such families. Thus, the marginal costs of further depressing vaccination and primary care treatment rates among children and communities with already below-average vaccination rates may be even greater than for the population at large.

- Draw on the expertise of agencies that are best placed to undertake this evaluation and have deep experience of it, such as CDC.

Furthermore, much of the extensive literature on the net benefits of prevention (through vaccination) and early treatment of communicable disease has been used extensively to support evaluations and quantifications of the impacts of policies with public health effects. For example, the CDC's extensive review cited above includes an Appendix setting out cost-benefit analyses of vaccination. Also, there is extensive academic research evaluating the costs and benefits of various policy changes that would affect vaccination rates and comparing different frameworks for conducting such evaluations of policy changes.

In short, not only is there a large body of primary empirical and clinical studies relevant to this group of harms from the proposed rule, but there is also a substantial literature providing frameworks for agencies to consider when evaluating whether and how to translate that literature into quantified and monetized estimates when considering policy changes that affect the prevention and treatment of communicable diseases.

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4. Uncompensated care

DHS acknowledges that the proposed rule may result in “Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.”

In other words, the proposed rule would increase the number of uninsured people, therefore increasing the cost of uncompensated care. DHS does not discuss or evaluate the scale or scope of uncompensated care increases. There is, however, a body of highly relevant empirical research that shows an undeniable relationship between health coverage and uncompensated care costs. DHS should consult and incorporate this research in its evaluation of the impacts of the proposed rule, including evaluating and discussing whether the research provides an appropriate basis for quantification (and if not, why).

A wealth of empirical studies and literature reviews have examined the extent to which various coverage increases, such as through Medicaid expansions, have decreased uncompensated care. Illustrative examples include:

- A 2018 report to Congress on Medicaid and CHIP by the Medicaid and CHIP Payment and Access Commission that sets out data highlighting the inverse relationship between Medicaid expansion and uncompensated care costs.216

- Research on the extent to which coverage increases due to Medicaid expansions reduced uncompensated care in various states. For example, a study of the Michigan expansion finds:

  Consistent with our earlier analysis using a subset of hospitals, these data indicate that the cost of uncompensated care provided by Michigan hospitals fell dramatically after the implementation of the Healthy Michigan Plan. For the average hospital, uncompensated care fell roughly in half, from $8.1 million to $3.9 million between 2013 and 2015. Expressed as a percentage of total hospital expenses, uncompensated care decreased from 4.8 percent to 2.2 percent. A total of 124 out of 138 hospitals (90 percent) saw a decline in the amount of uncompensated care provided between 2013 and 2015.217

An HHS report estimated that uncompensated care costs fell by $5.7 billion in 2014 due to the Medicaid expansion’s reduction in the number of uninsured.218


• A study from the Urban Institute finding a drop in past-due medical debt between 2012 and 2015 and discussing relevant literature associating that decline with expansions in health insurance coverage.\textsuperscript{219}

• An academic study published by the National Bureau of Economic Research finding a significant decline in medical bills sent to collection in states that expanded Medicaid.\textsuperscript{220}

• A CBPP review of the impact of the Medicaid expansion on uncompensated care costs\textsuperscript{221} that references empirical evaluations, each of which DHS should review and incorporate in a discussion of the likely increases in uncompensated care increases and related harms from the proposed rule.

• A Manatt report that estimates the increase in uncompensated care costs due to a drop in Medicaid and CHIP coverage as a result of the public charge rule. “[B]ecause hospitals provide a substantial share of the care delivered to Medicaid and CHIP enrollees, their payments at risk under the public charge rule total an estimated $17 billion in 2016,” it found.\textsuperscript{222}

DHS should also draw on this research on uncompensated care to acknowledge the broad set of people and entities, beyond providers, that could be hurt by an increase in uncompensated care, as discussed at Section III.A(5) and Section IV.C(2). For example, as discussed above, there is evidence that health coverage expansions through Medicaid not only reduce the cost of uncompensated care, but also improve households’ overall financial health. Medicaid not only has a direct impact on out-of-pocket expenditures, but also indirectly affects outcomes for households such as access to credit and disposable income for other goods and services.\textsuperscript{223} State budgets will also likely be affected by a rise in uncompensated care, which is often provided by safety net providers funded with state (and local) resources.\textsuperscript{224}


\textsuperscript{223} Brevoort, Grodzicki, and Hackmann.

5. DHS does not adequately evaluate the impacts to businesses and states

DHS states in both the Executive Summary and “Cost-Benefit Analysis” section:\(^{225}\)

DHS recognizes that reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals. For example, the proposed 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 (LIS) 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 discussion is cursory and incomplete. It fails to provide any discussion or evaluation of how levels and composition of consumption may change, and how those changes would affect producers, suppliers, and state budgets.

For example, households that forgo SNAP may not only eat less (thereby reducing food purchases) and be at higher risk of food insecurity, but also reduce their consumption of other goods to try to offset the loss of SNAP benefits and meet their basic food needs. A study of young children receiving health care in Philadelphia found that families that lost SNAP due to increased income from earnings were twice as likely to forgo seeking medical care, prescriptions, and/or oral health care for their young child because they weren’t able to pay, compared with families with young children that consistently received SNAP. In addition, they were 61 percent more likely to forgo medical care, prescriptions, and/or oral health care for one or more household members other than the young child because of inability to pay, and 95 percent more likely to report having to make health care trade-offs (that is, not paying for other basic living expenses such as rent, food, or utilities because they had to pay for medical care or prescription medicines).\(^{226}\)

DHS should acknowledge this potential impact on non-food producers and retailers, landlords, and other sectors.

Further, to the extent this were to occur, it could mean that a lower share of those household purchases may be subject to state sales tax, reducing revenues for states. DHS should acknowledge this potential impact on state budgets and estimate it. For example, in 2004 the California governor proposed to restrict California Food Assistance Program eligibility for certain immigrant households. The California Legislative Analysts Office’s analysis of the proposal’s fiscal impacts estimated that, by reducing consumption of non-food goods subject to General Fund Sales Taxes, the proposal would reduce state General Fund revenues by about $4.5 million annually.\(^{227}\)

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\(^{225}\) P51118, repeated at 51268-51269.


The proposed rule fails to explain these impacts and the research evidence related to them. DHS should incorporate these potential impacts into a sounder evaluation of the potential state budget impacts from disenrollment and forgone enrollment due to the proposed rule. This is just one example of how DHS’s acknowledgement and evaluation of downstream impacts from changes in the level and composition of consumption from disenrollment and forgone enrollment is incomplete. DHS should more fully evaluate and discuss each of the potential impacts it lists.

6. DHS does not adequately address costs to entities that will assist families facing hardship

DHS notes that “the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forgo enrollment in public benefit programs.”

These consequences are not “unanticipated” but fully foreseeable (as evidenced by their inclusion by reference in the proposed rule’s cost-benefit analysis) and could mean substantial impacts for states, localities, and private actors. DHS should incorporate a proper evaluation of this category of potential impacts in its analysis of the impact of the proposed rule. This evaluation should review and reference:

• The discussion and research listed above at Section IV explaining that states, localities, and private charitable programs will face new challenges to meet the needs of residents who are fearful of accessing benefit programs; that clinics, including federally qualified health centers and other local health safety net providers, will see more uninsured patients; and that food banks and other private nutrition providers will see increased volume.

• As discussed above in Sections III.A.(5) and IV.C.(2), hospitals and other providers will experience more uncompensated care, and there is a large body of literature on uncompensated care costs. DHS should evaluate and explain whether that body of empirical literature provides a basis for quantifying the impacts of the proposed rule on this dimension.

H. DHS does not adequately evaluate the impacts of the proposed bond regime, including transfers to surety companies

DHS states:

USCIS plans to establish a process to accept and process public charge bonds, which would be available on the effective date of the final rule. DHS welcomes comments on any aspect of the public charge bond or public charge bond process, including whether the minimum public charge bond amount should be higher or lower, and possible ranges for that amount.

The proposed rule suggests a base amount for a public charge bond of $10,000. DHS notes:

228 P. 51270
229 P. 51220
For all public charge surety bonds, an acceptable surety company is generally one that appears on the current Treasury Department Circular 570 as a company holding the requisite certificate of authority to act as a surety on Federal bonds. Treasury-certified sureties have agents throughout the United States from whom aliens could seek assistance in procuring an appropriate bond. The Department of the Treasury certifies companies only after having evaluated a surety company’s qualifications to underwrite Federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.

As explained above at Section II.G, the NPRM — in both the cost-benefit analysis and the section setting forth the bond requirements — fails to clearly evaluate the impact of the bond regime as proposed, including the degree to which it would reduce the number of individuals otherwise denied status adjustment or lawful entry under the proposed rule, the costs of these bonds, and who bears those costs. Such an evaluation should incorporate an understanding and assessment of the features of the proposed bond regime that give rise to costs and transfers, including how many people will secure these bonds, the bonds’ costs for those who hold them, the harm done when an individual with a public charge bond falls on hard times, the benefits for bond surety companies, and the costs borne by states and localities.

1. How many people will secure public charge bonds

As discussed in Sections II.G and II.H, the proposed rule seeks to reduce the extent to which a sufficient Affidavit of Support is actually sufficient to overcome a public charge finding. That is, under the proposed rule, more individuals with legally sufficient Affidavits of Support will be denied adjustment or entry under the proposed rule than is the case today. Given this, more individuals might wish to secure a public charge bond to overcome a public charge finding. But the NPRM does not estimate how many individuals would be permitted to present such a bond for this purpose, how many would be able to secure such a bond, and how many would, because of the bond, be granted admission or status adjustment. These are fundamental impacts of the bond provisions, but DHS provides no estimates on which to evaluate the extent to which these bonds would be used. If DHS thinks it is impossible to know or estimate this key feature of its proposal, it should explain why — and also explain why proceeding with the rule without this information is a sound approach.

2. The costs of bonds for those using them to overcome the proposed public charge definition

The DHS evaluation of the bond provision fails to acknowledge or attempt to quantify the costs to families that represent a direct transfer to bond surety companies. But the NPRM does obliquely recognize that such costs exist. At p. 51275 in the section titled “Regulatory Flexibility Analysis,” DHS states, “We expect that obligors would be able to pass along the costs of this rulemaking to aliens.” Thus, DHS acknowledges that surety companies will impose costs on families in the form of fees, penalties, and other conditions of the bonds. And while DHS’s discussion occurs in the context of small business impacts, the logic applies equally to larger surety companies. DHS should explicitly acknowledge and evaluate this transfer in its broader evaluation of the costs and benefits of the regime.
Costs imposed on families should be identified and quantified. They include:

- Upfront and ongoing fees and other costs that families will have to pay to surety companies to secure and maintain a bond, and other conditions of securing a bond that families will have to comply with, at cost to themselves and to the benefit of the surety company. Families will face years of annual fees, non-refundable premiums, and liens on the homes and cars put up as collateral charged by for-profit surety companies and their agents. Potential penalty costs may also be incurred. As part of this analysis, DHS should explain how long it thinks individuals will hold these bonds; this is a key element in the question of the costs facing individuals holding these bonds.

- Bond cancellation fees and other costs associated with cancelling the bond. The proposed rule lays out the circumstances under which the bonds can be cancelled, such as naturalization or permanently leaving the U.S. When conditions for cancellation are met, individuals must request cancellation, but there is no information in the NPRM about this process and its costs. If there is to be a greater number of individuals holding and ultimately cancelling bonds, these costs should be explained and quantified.

- Additional costs in securing, maintaining, and ending a bond, including but not limited to search costs to identify and confirm the authority of providers and time spent requesting information from state and local agencies.

Finally, evaluation of all these costs should consider the extent to which the potentially long timeframe for holding these bonds and the broad conditions potentially leading to forfeiture heighten the risk of exploitation by for-profit companies managing public charge bonds.

3. Harm to families that fall on hard times and include a family member with a public charge bond

The DHS evaluation should include the costs and steep penalties families would face if they fall on hard times, including for reasons entirely beyond their control (such as an illness or recession), and have to access program benefits. These costs should be estimated and the analysis should explain why the benefits of the bond regime are worth the hardship in these circumstances.

DHS’ evaluation of the costs and benefits of the proposed rule should incorporate an analysis of the potential harms when a family in which an individual holds a public charge surety bond falls on hard times, including the harm arising from forfeiting the bond or choosing to forgo needed benefits because of the steep cost associated with forfeiting the bond. The analysis should include

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231 DHS seeks to impose an affirmative obligation on the immigrant or obligor to request the cancellation of the bond upon naturalization, death, or permanent departure. Most LPRs are not eligible to naturalize until at least five years after becoming an LPR, and many more are unable to naturalize for longer than that for a variety of reasons.
impacts on children from the added financial hardship and instability from forgoing needed benefits or accessing them and having the bond forfeited. These impacts include both immediate and long-lasting health, education, and other harms that research shows can result from such hardship.

Finally, in evaluating these costs, DHS should consult the literature on the use of bonds in the pretrial context. For example, studies show that bonds cause long-term hardship and increase the likelihood of financial instability. Public charge bonds may have similar impacts, particularly given the likely long time horizon the bonds would be in effect.

4. Benefits for bond surety companies

Many of the costs noted above create a transfer from families to bond surety companies. DHS should evaluate and quantify the extent to which bond surety companies will capture monetary benefits from the proposed regime in the form of fees or other conditions for the bonds.

5. Costs to states and localities

DHS should also evaluate the costs to states and localities created by the regime. These may include:

- The administrative burden on federal, state, and county agencies, which would be required to verify non-receipt of benefits upon requests for cancellation of bonds.
- The regulatory burden that states and localities would bear if they seek to regulate what could be an expanded market for these bonds (since they are not in significant use currently).
- The potential creation of a new market for public charge bonds (again, the NPRM’s lack of analysis on the degree to which this is likely to happen hinders our efforts to comment on the implications here). States and localities would be responsible for regulating bond insurers and bond agents (including those issuing immigration detention bonds) if they are concerned with protecting consumers in this market — as would be reasonable, given the issues noted above with bond companies in the criminal justice context. Many states already struggle to adequately regulate their current bond industries.232 DHS should evaluate and quantify the costs for states and localities, including state and local insurance and financial services regulators, of expanding the market.

Further, if the bond regime is workable (as DHS presumably believes), assessment should consider that states and localities may respond to the added administrative and enforcement needs stemming from this new bond market segment either by bearing the cost of expand those activities into the new market segment or by reducing administration and enforcement in existing bond industry market segments. As noted above, the literature suggests that enforcement is already inadequate.

I. The NPRM fails to fully evaluate costs associated with both understanding the proposed rule and, more importantly, communicating with immigrant families — and organizations that work with immigrant families such as religious institutions, schools, and social service agencies — about the proposed rule

DHS briefly discusses “familiarization costs,” which it defines narrowly as the time that various actors will spend reading any final rule to understand it. The NRPM states:

Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born non-citizen (such as those contemplating disenrollment or forgoing enrollment in a public benefits program) might review the rule to determine whether they are subject to the provisions of the proposed rule. To the extent an individual or entity that is directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those being directly regulated by the rule, a wide variety of other entities would likely choose to read the rule and also incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may want to become familiar with the provisions of this proposed rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule in order to provide information to those foreign born non-citizens and associated households that might be impacted by a reduction in federal transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs. DHS estimates the time that would be necessary to read the rule would be approximately 8 to 10 hours per person, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person who reads the rule.” (bolded emphases added)

DHS’s discussion of these costs is incomplete in several significant ways. As a result, DHS fails to acknowledge or assess important substantial costs stemming from the proposed rule, including costs associated with communicating with individuals who could be directly affected by the proposed rule and the costs associated with efforts to reduce the number of families that forgo benefits but will not face a public charge determination.

1. Communicating to those directly affected

While DHS acknowledges that various entities such as non-profits and advocacy groups will familiarize themselves with the rule “in order to provide information” to people who might be directly affected, it fails to acknowledge that this may be resource-intensive and so carry substantial costs, such as costs associated with:

- Time creating new materials, or revising existing materials, to explain in plain terms for non-experts how the new rule operates. These materials would need legal review in many cases to ensure accuracy.

233 p. 51270. DHS includes a truncated summary of familiarization costs at p. 51118 in the Executive Summary, and Table 1.
• Time and outlays spent on translating new and updated materials into multiple languages.

• Time and outlays spent updating software (such as benefit calculators), websites, print materials, and other resources to reflect the proposed rule.

• Time and outlays spent to search websites and social media sites (Facebook, Twitter, Instagram, etc.) for outdated descriptions of the rule or proposed rule that users may come across when doing a broad web search, and then to pull down any outdated materials or mark them to make clear that they are no longer accurate.

• Time and outlays spent on outreach and dissemination to alert communities that the rule has changed and that old materials and guidance no longer apply.

• Training costs, such as:
  - Holding community meetings and webinars to inform affected communities and other entities that work with those communities.
  - Training front-line service providers or outreach staff who will not read the rule themselves but will need to answer questions or inform clients about it.

• Time spent fielding questions from potentially affected individuals and communities, and further updating materials to address common areas of confusion and uncertainty as they arise. This may include time spent collecting questions, triaging them for urgency, and tracking them, as well as time spent responding.

Private entities also would likely incur costs monitoring and communicating about how the proposed rule (once finalized) is being applied in practice. As discussed in Section II above, the proposed rule would give immigration officials very broad authority. This means that entities would need to monitor how immigration officials approach the determination in practice in order to advise individuals and communities about how they might expect the rule to be applied in general and in specific circumstances. This work is time- and resource-intensive.

Such costs of communicating the impact of the proposed rule are an extension of the narrow “familiarization costs” that DHS discusses in the NPRM, but the costs of communicating the impact of the proposed rule to potentially affected people who are not experts (and the other costs listed above) will often exceed the quantified costs of staff simply reading any final rule.

2. Communicating to reduce chill

Second, DHS’s evaluation of “familiarization costs” is inadequate because it fails to acknowledge that various entities’ efforts to communicate the impact of the proposed rule would have to reach far beyond those whom it would directly affect — that is, those who will face a public charge determination and who would be at heightened risk for a denial of status adjustment or entry as a result of this rule. Indeed, much of the communication that entities would undertake would involve making clear to people not directly affected by the proposed rule that they still can claim the benefits to which they are entitled without putting at risk the outcomes of immigration determinations for themselves, their households, or their broader families.
As noted above, many entities are already seeing the proposed rule (and prior leaked drafts) cause confusion and fear among the populations they serve. The chill impact of the proposed rule is far wider than those directly affected by the rule and is leading people to forgo benefits, with substantial costs for people, communities, and providers. Community groups and other entities would likely do what they can to reduce chill, given these impacts, but they almost certainly would not be able to eliminate the chill effects entirely. Notably, the Administration has not indicated that it will undertake any efforts to tamp down confusion about the proposed rule to reduce the chill impact; thus, much of the work to reduce the negative effects of chill would likely fall to states, communities, and providers.

Given the widespread impact of the chill, all the activities and costs listed in the subsection above would be needed not just for people directly targeted by the new rule, but also those who might wrongly believe it could affect them and so might forgo assistance for which they are eligible.

The costs of communicating to those directly affected by the proposed rule and reducing chill are already being incurred. Many entities are already expending time and resource producing and disseminating materials that explain the proposed rule and attempt to explain to potentially affected communities how it might work, including who would not be directly affected and could continue to access benefits without risking a negative immigration consequence. This work includes explaining to service providers what they might say to immigrant families.

For example, CBPP runs a Health Reform: Beyond the Basics project designed to provide training and resources that explain health coverage available through Medicaid, CHIP, and the marketplaces. It is aimed at navigators, advocates, state and local officials and others who help consumers get and keep their health coverage. Due to the proposed rule, CBPP has updated its Beyond the Basics webinars to incorporate the latest understanding of the impact of the proposed rule for immigrant families, specifically adding a new section on “Concerns related to use of public benefits and proposed ‘public charge’ rule” to address common concerns and potential misunderstanding. CBPP alone spent many hours of staff time at multiple levels of seniority for this update. Further, CBPP needed to consult organizations more expert in immigration law and messaging to immigrant families in order to ensure that the update was accurate and clear for non-legal audiences who directly serve marketplace consumers.

This is just one example for one product focused on one program, so is a tiny window into the substantial costs that many other entities are incurring or would incur to communicate the impacts of the proposed rule.

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234 Sections VI.F and IV.

235 See http://www.healthreformbeyondthebasics.org/about/

The list below is far from exhaustive but highlights the many health organizations and providers at the national, state, and local levels creating and releasing new materials that address the potential impact of the proposed rule for communities they serve:

- California Primary Care Association\(^{237}\)
- National WIC Association\(^{238}\)
- La Clínica del Pueblo\(^{239}\)
- Colorado Health Institute\(^{240}\)
- Legal Aid Society\(^{241}\)

Many other entities that work on different programs or with different parts of immigrant communities already are likewise updating and disseminating new resources to alert affected households of how they might be affected and to reduce chilling and unnecessary fear among those who would not be directly subject to an unfavorable public charge determination under the proposed rule.\(^{242}\)


\(^{241}\) “Public Charge? Screening Tool and Attorney Referral Information for Community-Based, Social Services, and Advocacy Organizations,” The Legal Aid Society, November 27, 2018, https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5bfeb9f76d2a737720f245ad/1543420408161/Screening+Tool+%28ver+11-28-2018%29.pdf.

It is important to note that if private entities were not to undertake this work, the number of individuals and families that forgo benefits would be far higher. Thus, the smaller DHS assumes the chill effect to be, the more it is implicitly assuming that community groups — as well as states, localities, and providers — are effectively (and at substantial cost) explaining the proposed rule to communities.

Finally a sound discussion of the costs of communicating the impact of the proposed rule should also take into account the administrative burden on states and localities from addressing fear and confusion among families. States and localities would have to modify outreach and consumer education materials to attempt to address the fear and confusion created by the proposed and then finalized rule, and would have to train staff on how to answer questions about it. This may mean shifting resources from other activities. DHS should acknowledge and evaluate the potential burdens on states and localities, including those discussed in sections above.

3. Costs to individuals and families go far beyond reading time

The discussion of familiarization costs also fails to consider that for potentially affected individuals and households, time spent familiarizing themselves with the rule would not be limited to simply reading any published final rule.

Any published final rule will likely be incomprehensible to most non-experts, let alone those whose first language is not English. Furthermore, any published rule will lack important information that matters to individuals and families making decisions that could affect their immigration status and participation in programs. Because the determination under the proposed rule is so fact-specific and gives immigration officials broad authority to make public charge determinations, potentially affected individuals will often need guidance that incorporates an understanding of how the rule is being applied in practice and that is tailored to their circumstances.

Seeking out such plainly worded information on the rule and how it might work from reliable sources will entail substantial and foreseeable costs for individuals and families, which might include:

- Search costs to identify information about the rule and how it might apply to their situation, and to attempt to confirm sources of information as reputable and reliable.
- Identifying and seeking out affordable expert advice.
- Outlays for advice from immigration attorneys or other advocates tailored to a household’s specific situation.
- Finding all the above in a language that the individual is fluent in, or additionally seeking interpretation services.

Because DHS does not acknowledge these costs, let alone attempt to evaluate them, it vastly understates the costs of an ill-conceived policy with entirely predictable harm that the federal government would be imposing deliberately.
J. The NPRM fails to address other administrative and compliance costs

The NPRM’s discussion of administrative and compliance costs is inadequate in important ways. For example, the instructions to the I-944 form state that the applicant is supposed to get much of the detail required by the form from the relevant state agency. The form states:

If you applied for, are currently receiving, or previously received, any of the public benefits listed above, provide evidence in the form of a letter, notice, certification or other agency documents that contain the following:

1. Your Name;
2. Name and contact information for the public benefit granting agency;
3. Type of Benefit;
4. Amount of benefit(s) received (indicate whether weekly, monthly, or annually. If other, explain);
5. Date Benefit Was Granted;
6. Date the Benefit Ended or Expires (mm/dd/yyyy) (if applicable); and
7. Number of Household Members Receiving the Benefit (if applicable).

DHS fails to discuss and evaluate either the costs to the immigrant of obtaining that information from state agencies, or the costs to states of providing that information in formats that make it usable for the purposes of the I-944. DHS should do so in order to properly evaluate the impacts of the proposed rule.

K. Compliance cost opportunity cost estimate

DHS assumes for the purpose of quantifying compliance costs that many categories of applicants for admission or status adjustment are paid the federal minimum wage, adjusted for average benefits. But for those already in the U.S., a minimum wage by definition cannot be the average wage (unless there are massive wage theft and labor law violations). The analysis neither asserts nor provides any supporting evidence that a large share of workers who are affected by the proposed rule’s compliance costs and are already in the country are being paid less than federal minimum wage. Nor does it estimate the shares of those facing compliance costs who are already in the country versus outside of it.

The fact that DHS did not seek to determine the wage distribution of those affected by new filing requirements and instead uses a minimum wage rate points to a far more fundamental problem with DHS’s assessment of the proposed rule. It is a further symptom of the fact that DHS has done no analysis of the group of individuals who would face the proposed public charge rule or their basic characteristics, including the wage distribution or location of those affected.

APPENDIX I

Center on Budget and Policy Priorities’ Contributors to our Public Comments
(listed alphabetically)

Jennifer Beltrán is a Research Assistant at CBPP and works with federal fiscal experts at CBPP on budget and tax policy as well as on issues related to immigrants. Beltrán joined the Center in 2018 and holds B.A. degree from Swarthmore College.

Ed Bolen joined the Center in 2010 as a Senior Policy Analyst. His work focuses on state and federal issues in the Supplemental Nutrition Assistance Program. Prior to joining the Center, Bolen was Senior Policy Analyst at California Food Policy Advocates. While there, he worked toward administrative and legislative improvements to food assistance programs and provided training and technical assistance to community-based organizations. He also has worked in public health law, most recently consulting on legal strategies to combat childhood obesity with the National Policy and Legal Analysis Network. Prior to that, Bolen was senior staff attorney at the Child Care Law Center, specializing on licensing, subsidy and legislative issues affecting low-income families in child care and early education settings. He received his law degree from University of California Hastings.

Matt Broaddus is a Senior Research Analyst in CBPPs Health Division. He has 19 years of experience conducting and evaluating research on the consumer benefits of health insurance coverage and the critical role of public health care benefits for low-income families. He is an expert in sources of data on health coverage and on research related to the impacts of health coverage and Medicaid on health and other outcomes.

Stacy Dean joined CBPP in 1997 and current serves as the Vice President for Food Assistance Policy at the Center on Budget and Policy Priorities and has [2X] years of experience on food assistance and other programs that serve low- and moderate-income individuals and households. She directs CBPP’s food assistance team, which publishes frequent reports on how federal nutrition programs affect families and communities and develops policies to improve them. Dean’s team also works closely with program administrators, policymakers, and non-profit organizations to improve federal nutrition programs and provide eligible low-income families with easier access to benefits. In addition to her work on federal nutrition programs, Dean directs CBPP efforts to integrate the delivery of health and human services programs at the state and local levels. Dean has testified before Congress and spoken extensively to national and state non-profit groups.

Previously, as a budget analyst at the Office of Management and Budget, she worked on policy development, regulatory and legislative review, and budgetary process and execution for a variety of income support programs. She currently sits on the Board of Social Interest Solutions, a non-profit technology firm.

Shelby T. Gonzales is a Senior Policy Analyst at CBPP. Gonzales has more than twenty years of experience in conducting effective outreach to increase participation in public benefit programs. Her work has included advancing policies that promote enrollment while protecting program integrity and designing interventions that address systemic barriers to enrollment for groups disproportionately eligible for but not participating in programs, including immigrants. Gonzales
directed a children’s health coverage outreach program in Virginia for almost a decade, sits on the Virginia Children’s Health Advisory Committee, and served two terms as a member of the U.S. Health and Human Services’ Advisory Panel on Outreach Education.

**Chye-Ching Huang** is the Director of Federal Fiscal Policy at CBPP, where she focuses on the fiscal and economic effects of federal tax and budget policy. She has worked as a solicitor, legal academic, and economic policy analyst in New Zealand. She holds an LL.M. from Columbia Law School, and a Bachelor of Commerce in Economics and a Bachelor of Laws from the University of Auckland in New Zealand. She first joined the Center in 2008-2009 as a Research Fellow and rejoined the Center in July 2011.

**Sharon Parrott** is a Senior Fellow and Senior Counselor at CBPP. She has more than 25 years of experience working on a broad range of policy issues that affect the lives of low- and moderate-income individuals and families, including the intersection of immigration and program policies. Parrott rejoined the Center in 2017 after serving for two years as Associate Director for the Education, Income Maintenance, and Labor (EIML) Division at the Office of Management and Budget (OMB). At OMB she had budget and oversight responsibilities for the Departments of Labor and Education, the Social Security Administration, the human services programs at the Department of Health and Human Services, and the nutrition programs at the Department of Agriculture. Parrott also served at the Department of Health and Human Services from 2009 to 2012 as Secretary Kathleen Sebelius’ Counselor for Human Services Policy. At HHS, she served as a lead advisor to the Secretary on the broad range of human services programs within the Department’s purview.

Parrott previously worked at the Center from 1993 through August 2009 and from November 2012-December 2014. During her previous work at the Center, she focused on a broad set of cross-cutting poverty issues and programs that serve low- and moderate-income people as well as on the impact of federal budget decisions on low-income populations.

**Douglas Rice** is a senior policy analyst at CBPP on the Housing Policy team. Doug is an expert on budgetary and policy issues in federal housing assistance programs, and has a strong interest in policies that reduce instability and homelessness, and improve children’s well-being and chances of long-term success. Before joining CBPP in 2005, Doug was director of housing and community development policy at Catholic Charities USA, which represents one of the nation’s largest networks of social service providers. He has degrees from Harvard College and the University of Massachusetts at Amherst.

**Liz Schott** is a Senior Fellow at CBPP on the Family Income Support team. She is an attorney with over 40 years of experience in low-income benefit programs. She worked for 19 years at legal services in Washington State, including 10 years as the statewide coordinator for public benefits issues. During this time, she litigated numerous class actions relating to public benefits in federal and state courts. She has worked at CBPP for 15 years, focusing on public benefit issues. She also has served as a consultant for national research organizations, including MDRC and Mathematica Policy Research, and as an adjunct professor at Seattle University School of Law teaching courses in Poverty Law and Public Benefits Law.

**Arloc Sherman** is a Senior Fellow in CBPP’s data analysis division. His work focuses on income trends, income support policies, and the causes and consequences of poverty. He has written extensively about the effectiveness of government poverty-reduction policies, the influence of
economic security programs on children’s healthy development, the depth of poverty, tax policy for low-income families, welfare reform, economic inequality, material hardship, parental employment, and the special challenges affecting rural areas. He has deep expertise on Census and other data sources and which data sources are most reliable for measuring program participation and anti-poverty impacts. He was a member of the National Academy of Sciences Committee on National Statistics Panel to Review and Evaluate the 2014 Survey of Income and Program Participation’s Content and Design. His book Wasting America’s Future was nominated for the 1994 Robert F. Kennedy Book Award.

Judy Solomon is a Senior Fellow and her work focuses on Medicaid and other health programs with a concentration on policies to make coverage and health care services available and affordable for low-income people. She has testified before state legislatures and spoken extensively to national and state nonprofit groups and is often cited by national and state media, including the New York Times, USA Today, Wall Street Journal, and Washington Post. Previously, Solomon was a Senior Policy Fellow at Connecticut Voices for Children and Executive Director of the Children’s Health Council. She directed the Council’s work on policy analysis, outreach, education and training, and independent oversight of health care services provided through Connecticut’s Medicaid managed care program. She has also worked as a legal services attorney specializing in the area of public benefits and taught at the Yale University School of Medicine. Solomon is a graduate of the University of Connecticut and Rutgers University School of Law in Newark.

Chad Stone is Chief Economist at the Center on Budget and Policy Priorities, where he specializes in the economic analysis of budget and policy issues. He was the acting executive director of the Joint Economic Committee of the Congress in 2007 and before that staff director and chief economist for the Democratic staff of the committee from 2002 to 2006. He was chief economist for the Senate Budget Committee in 2001-02 and a senior economist and then chief economist at the President’s Council of Economic Advisers from 1996 to 2001. Stone has been a senior researcher at the Urban Institute and taught for several years at Swarthmore College. His congressional experience also includes two previous stints with the Joint Economic Committee and a year as chief economist at the House Science Committee. He has worked at the Federal Trade Commission, the Federal Communications Commission, and the Office of Management and Budget. Stone is co-author, with Isabel Sawhill, of Economic Policy in the Reagan Years. He holds a B.A. from Swarthmore College and a Ph.D. in economics from Yale University.

Danilo Trisi is a Senior Research Analyst in the Family Income Support Division, where his research has focused on poverty and income trends, labor market analyses, income inequality, the TANF program, and the effectiveness of the safety net. He has worked in public policy research for over 15 years. His research draws on national survey data, administrative data, and micro-simulation of tax and transfer programs. Trisi also provides support to many of the Center’s cross-cutting research projects such as the design of policies to help current food assistance recipients enroll in Medicaid. Trisi is an expert in Census data sources. He holds a Ph.D. from the University of Maryland’s School of Public Policy, a Master’s degree in Latin American Studies from the University of California, Berkeley, and a B.A. degree from Pomona College.

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