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December 7, 2018

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

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

Dear Sir/Madam:

On behalf of the Alameda County Social Services Agency (ACSSA), I am writing to strongly oppose the Department of Homeland Security's proposed public charge rule. ACSSA is of the position that none of the public benefits under consideration for the expansion of a public charge determination as outlined in the Notice of Proposed Rule Making (NPRM) should be included. As the local agency responsible for administering eligibility for CalFresh (the Supplemental Nutrition Assistance Program (SNAP)) and Medi-Cal (Medicaid and the Children's Health Insurance Program (CHIP)), we see every day the resilience and determination of those we serve to provide for their families. The use of public benefits does not indicate that an individual or family cannot provide for themselves; instead, it is an indicator of the broader economic environment in which they are situated. Families and individuals who are legally entitled to participate in these public benefit programs, and, with the Affordable Care Act (ACA), have been largely encouraged to do so, and should not be penalized in any way for receiving the support necessary to make ends meet. ACSSA requests that the Department of Homeland Security (DHS) immediately withdraw the NPRM.

As the primary provider of services in California, county agencies serve individuals and families with various immigration histories. The County of Alameda is a vibrant and inclusive county that celebrates diversity and supports our community members to achieve their dreams. We see first-hand the impacts of federal law and regulation changes, such as those proposed within the published notice. If this rule is published as is, our county would bear the cost of the harms caused by this rule, including its negative economic and public health impacts on our county's residents.

Our county staff, who administer the programs that would be affected, also would experience a significant workload burden due to the rule.

In particular, the proposed rule would broaden the list of benefits considered as “negative factors” in a public charge assessment to include, for the first time, consideration of Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Section 8 Housing Vouchers, public housing and Medicare Part D financial assistance. The rule also would add a complex set of factors to the existing public charge test that determines whether an individual is likely to become a public charge, including new requirements related to the consideration of characteristics such as a specified threshold income level, insurance status and English proficiency, along with the receipt of public benefits.

Our county’s clientele includes many immigrant families who will be harmed by the chilling effect of this proposed rule, whether the rule applies to them directly or not. We have already seen families depriving themselves of healthy food, safe housing, and regular medical care in fear of the possible impacts of a change to the public charge rule. The fear created by these rules would extend far beyond any individual who might actually be subject to the public charge test; our concern is that these changes will discourage many immigrant families from accessing benefits for which they are eligible.<sup>1</sup> This could include non-immigrant family members who would not be impacted by this rule directly, but who might choose to go without coverage due to the heightened fear in our communities about the potential effects of these new rules.

Disenrollment of eligible recipients would especially impact Californians, where one in three residents are enrolled in the state’s Medicaid program and nearly 4 million receive SNAP benefits. This chilling effect, resulting in reduced health care coverage and increased hunger, will place our county’s overall well-being in danger as well, due to foregone health care and nutrition benefits creating sicker, poorer communities. The proposed rule itself states, “There are a number of consequences that could occur ... Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence ... and increased rates of poverty.”

The NPRM finds that “non-cash public benefits play a significant role in the Nation’s social safety net,” and the SIPP data cited shows that use of Medicaid, SNAP, and housing vouchers by foreign-born citizens and non-citizens is approximately equal – though slightly lower – than the use of the same benefits by native-born citizens. We agree that “non-cash public benefits play a significant role in many peoples’ lives,” but disagree on the conclusion that use of these benefits indicates weak economic condition, or the inability to support oneself or one’s family. Public benefits are a support to the families’ entire economic picture, and are only very rarely the totality of a family’s income. In the NPRM, DHS states that “receipt of such benefits even in a relatively small amount or for a relatively short duration would in many cases be sufficient to render a person a public charge.” ACSSA disagrees with this conclusion, and believes that self-

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<sup>1</sup> Emily Bazar, Some Immigrants, Fearful of Political Climate, Shy Away from Medi-Cal (Kaiser Health News, February 22, 2017) <https://khn.org/news/some-immigrants-fearful-of-political-climate-shy-away-from-medi-cal/>

sufficiency is a standard that includes all economic factors of an individual's or family's life.

"Self-sufficiency" without support is a standard that many individuals and families – regardless of immigration status or country of origin – cannot meet. This inability is not due to an individual fault; rather, incomes have not kept pace with the cost of providing even the most basic of needs. Importantly, in high cost areas, "self-sufficiency" is a standard that does not account for the regularity of public and private support. In Alameda County, approximately one in four county residents use the support of public benefits on any given day to make ends meet. Given the high cost of living in Alameda County, and throughout much of California, the reality, regularity, and frequency of public benefit use should come as no surprise. While California ranks 16<sup>th</sup> in the nation under the official poverty measure, the State ranks first in the nation under the Supplemental Poverty Measure (SPM), which factors in some elements of the cost of living.<sup>2</sup>

In addition to the SPM, another method that measures the ability of households to make ends meet is called the Self-Sufficiency Standard. It assumes the full cost of each need, without help from public subsidies or private/informal assistance. For 2018, findings for the State of California include: 3.3 million households are living paycheck to paycheck, and 58 percent of households with children under the age of 6 cannot meet their basic needs. In Alameda County, 32 percent of households - and 42 percent of households with one or more children – live below the Standard.<sup>3</sup> Even with two working adults in the household, close to one in six households in Alameda County cannot make ends meet. According to the Self-Sufficiency Standard, the following incomes are necessary to meet basic needs in Alameda County: single adult: \$41,858; single adult with 1 preschool aged child: \$79,933; 2 adults with 1 school aged child and 1 preschool aged child: \$98,296. Though Alameda County has a high median income of \$79,831 for individuals and \$97,145 for families, 9.5% of individuals earn less than \$15,000, and 16.7% of families earn less than \$35,000 – less than half the amount indicated as necessary by the Standard.<sup>4</sup> These individuals and families are potentially eligible for public benefit programs due to their low income.

Alameda County, like many high-cost areas in California, has been faced with a sharp increase in individuals and families experiencing homelessness. The high cost of housing and shortage of affordable housing options make resolving the issue particularly challenging. Housing assistance programs such as the Section 8 Housing Choice Voucher Program and Project Based rental assistance, and Public Housing play a critical role in providing a housing safety net. The NPRM proposes to include these housing programs in public charge considerations, despite acknowledging that "noncitizen participation in these programs is currently relatively low." Individuals and families who are receiving this support may choose to leave the programs – or,

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<sup>2</sup> U.S. Census Bureau (2018) The Supplemental Poverty Measure: 2017.  
<https://www.census.gov/library/publications/2018/demo/p60-265.html>

<sup>3</sup> The Self-Sufficiency Standard for California 2018, Center for Women's Welfare, University of Washington.  
<http://www.selfsufficiencystandard.org/california>

<sup>4</sup> U.S. Census Bureau (2016) American Fact Finder.  
[https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml)

in the case of Project Based and Public Housing, leave their homes – placing them at high risk of housing instability or homelessness. As explained above, the inability to afford housing is not an indicator of a lack of self-sufficiency; rather, it is an indicator of a housing market that leaves many households with few options beyond a high housing cost burden. According to the American Community Survey, 40 percent of all households in Alameda County have a housing cost burden, meaning they pay more than 30 percent of their income on rent. Housing assistance programs support low and moderate-income households in keeping their housing costs manageable, so that they can afford other basic needs such as food, child care, health care, and other necessary items. As an agency that provides support to individuals and families experiencing homelessness, ACSSA strongly opposes a policy that could increase homelessness and request it not be considered in public charge determinations.

### **Financial Impact**

There is history to indicate the chilling effect of rule changes such as those proposed in the draft rule. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIR) codified the factors that had been used in public charge determinations for many years. It also established a new affidavit of support that could be used to overcome a public charge barrier. But, as immigration officials clarified in the following years, the law did not alter the public charge test itself. Another law, PRWORA, restricted eligibility for public benefits, but also did not alter the public charge test. The enactment of the two laws, and some overreaching by federal and state agencies, generated confusion and panic within the immigrant community and discouraged many from seeking critical health and nutrition benefits for fear of deportation. **The Migrant Policy Institute found that during this time period there was a sharp decline of immigrants' use of public benefit programs like Medicaid & CHIP.**<sup>5</sup>

Applying this past experience to today's proposal, it is clear that reductions in the use of health coverage and nutrition benefits will negatively impact the county's economy. As just one example, the U.S. Department of Agriculture estimates that every \$1 in SNAP benefits generates \$1.79 in economic activity.<sup>6</sup> For the state of California, even a 1 percent drop in SNAP enrollment as a result of these rules would equate to a loss of more than \$100 million per year in economic activity.

The proposed rule is a drastic reinterpretation of the statute guiding public charge, exceeding decades of interpretation. The Kaiser Family Foundation estimates that 94 percent of applicants who entered the U.S. without Legal Permanent Resident (LPR) status in 2014 would have a

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<sup>5</sup> Batalova, Jeanne, Michael Fix, and Mark Greenberg. 2018. Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use. Washington, DC: Migration Policy Institute.

\*Migration Policy Institute (MPI) estimates based on analysis of American Community Survey pooled data, 2014-16. \*The term "Non-citizen" as used by MPI includes people who are refugees and asylees, visa-holders, green-card holders, undocumented.

<sup>6</sup> Economic multipliers are estimated by the USDA's Food and Nutrition Service. See: Hanson, Kenneth. 2010. The Food Assistance National Input-output Multiplier (FANIOM) Model and Stimulus Effects of SNAP, U.S. Dept. of Agriculture, Economic Research Service.

“negative characteristic” as proposed in the NPRM.<sup>7</sup> More than a quarter of this population could be found inadmissible due to use of a public benefit. To propose that the minor use of public benefits, valued at only approximately \$150 a month, is indicative of a family’s “primary dependence” on public benefits ignores the high cost of living throughout much of the nation. This proposal also ignores the work the vast majority of immigrants do to contribute to their families and communities. ACSSA has estimated that if the rule was implemented, the direct economic impacts would range from a loss of \$29.8 million to \$59.6 million to our local economy, and potentially impact more than 70,000 individuals. These individuals, and their families, would face declining health outcomes, heightened food insecurity, and worsened housing instability. Our entire community would suffer these outcomes, not just the impacted immigrant communities who choose to disenroll from benefits to protect their families.

Based on these figures, the fiscal effect of the proposed policy changes would equal billions of dollars lost from our state economy just in SNAP alone, and even more across the nation. This doesn’t include other costs such as foregone federal and state taxes from adults who are unable to work due to hunger, sickness and homelessness from foregone benefits in the programs that are proposed to be added to the public charge definition.

Public benefit programs not only help individuals and families make ends meet in an economy not structured for low income earners, but they also help decrease poverty rates. According to the Center for Budget and Policy Priorities (CBPP), SNAP is the nation’s largest child nutrition program. It kept 2 million children out of poverty in 2010, and lifted 1.3 million children out of deep poverty, or above 50 percent of the poverty line – more than any other benefit program.<sup>8</sup> The National Poverty Center similarly found that SNAP benefits reduced the number of children living in extreme poverty – in families earning less than \$2 a day – by half, from 2.8 million to 1.4 million.<sup>9</sup>

The CBPP report also highlighted the long term positive impacts on childhood development for SNAP recipients: “Children in families receiving SNAP were less likely to be underweight or at risk of developmental delays than children in households that were eligible for, but not receiving, SNAP. When compared to children in families with similar incomes eligible for but not receiving SNAP, children in families receiving SNAP were more likely to be food secure and to be classified as ‘well’ — not overweight or underweight, in good health, developing normally for their age, and having never been hospitalized.”<sup>10</sup> These findings comparing children who receive SNAP with those who are eligible but not receiving the support are of particular concern in light of the proposed rule change. More children, native born and immigrant, are likely to

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7 Arita, Samantha, Rachel Garfield, and Anthony Damico. Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid. Kaiser Family foundation Issue Brief, October 2018. <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>

<sup>8</sup> Keith-Jennings, Brynne. SNAP Plays a Critical Role in Helping Children, Center on Budget and Policy Priorities. Washington DC, <http://www.cbpp.org/files/7-17-12fa.pdf>

<sup>9</sup> Shaefer, H. Luke and Kathryn Edin. Extreme Poverty in the United States, 1996 to 2011, National Poverty Center Policy Brief #28. [www.npc.umich.edu/publications/policy\\_briefs/brief28/policybrief28.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief28/policybrief28.pdf)

<sup>10</sup> Keith-Jennings, Brynne.



shift from the category of “receiving SNAP” to “eligible but not receiving SNAP” if the proposed rule becomes final, worsening short and long-term outcomes in development. CBPP notes that food insecurity is associated with poorer physical health, decreased school achievement in reading and math, and behavioral and psychological conditions – conditions that affect children’s ability to learn and perform well in school, which has long-range implications for their future well-being and earning potential.

In a separate but related report, CBPP discusses the lower health care costs associated with SNAP receipt: “On average ... people in food-insecure households — those lacking consistent access to adequate food at some point during the year due to limited resources — spend roughly 45 percent more on medical care in a year (\$6,100) than people in food-secure households (\$4,200). And extensive research has shown a strong correlation between food insecurity and chronic health conditions among various age groups: children, working-age adults, and seniors.”<sup>11</sup> Food insecurity is associated with higher health care use, and costs. Individuals who are food insecure are less likely to take prescribed medications, and less likely to manage chronic illness. This is of particular concern for older adults, and people with disabilities. “Adults in food-insecure households are about 50 percent more likely to visit an emergency room and to be admitted to a hospital, and they stay hospitalized about 50 percent longer, than adults in food-secure households. Food-insecure seniors are more likely to make use of health care services, including office visits, overnight stays in a hospital, and emergency rooms, than food-secure seniors.” SNAP is the primary program assisting families of all compositions – those with children and those with older adults – in achieving food security. If families disenroll from SNAP due to the proposed public charge rule, there will be an increase in food insecurity, with negative related health outcomes, and higher costs, for immigrants and non-immigrants alike.

In addition, there will be impacts to our staff workload and ability to effectively and efficiently process eligibility for the affected programs. Issues our county agencies will face include:

- Increased caseload turnover, or “churn,” in affected programs. As noted above, some recipients will disenroll from programs that help them stay healthy, keep food on the table and maintain housing. Because these programs provide a critical safety net that families need, it is likely that many will decide to return to the program over time. This could be due to significant health needs that develop, because the individual realizes he or she is not likely to be affected by the public charge rule, or for other reasons. This increase in “churn” in the programs our county administers would create a new, highly duplicative, workload for county eligibility staff and a direct cost increase to the federal, state, and local governments that jointly fund this work. In one study of SNAP-related churn, the costs averaged \$80 for each instance of churn that requires a new application, just on the administrative side alone.

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<sup>11</sup> Carlson, Steven and Brynne Keith-Jennings. SNAP is Linked with Improved Nutritional Outcomes and Lower Health Care Costs, Center on Budget and Policy Priorities. <https://www.cbpp.org/sites/default/files/atoms/files/1-17-18fa.pdf>

Further, to the extent that individuals and families return to a program when their health deteriorates, their care will be more costly than if they had continuous coverage without a break, and therefore had been able to access preventive care and be diagnosed and treated earlier for a range of conditions.

- Responding to consumer inquiries related to the new rule. Our county agencies will undoubtedly experience increased call volume and traffic from consumers concerned about the new policies, requiring ongoing development of messaging for staff to use and training on that messaging, as well as reviewing outcomes over time. It will be difficult to properly advise our customers about changes to the public charge determination and how their receipt of various benefits might affect them at some future date. It will be critical to ensure our staff have nuanced messaging at their fingertips and are trained on how to engage clients about the rule.
- Responding to requests for proof of benefits receipt. The draft form I-944 (see: <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>), would require states and counties to develop new processes in response to the rule. Applicants for a change in immigration status would be required to provide supporting documentation not only about whether they received a public benefit, but the type, amount, agency that granted it, date it was granted and expired and who in the household received it. Recipients will also need to document any Medicaid received (even if it does not count against them due to the exclusions in the proposed rule).

Being able to provide this information in a comprehensive and timely manner will require system updates, new work processes and likely hiring and specially training additional personnel for counties to respond to such requests. Counties will need to work with the state to develop standardized processes for receiving requests and providing such information across the state that safeguards personal data. This is not only a significant workload but also would include potentially major automation costs, given the level of detail required by the draft I-944 form – which requests information about the amount of benefits paid even for services that are typically transparent to a recipient, such as funds paid for health care provided through Medicaid, information that is not held in the California system of record for Medicaid eligibility but in a separate medical information system.

- Modifying existing communications and forms related to public charge. For almost 20 years, agencies have worked under consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application, application instructions, website, posters used in lobbies, in notices and in scripts and trainings for staff. All of these consumer communications will have to be identified and taken down or changed. In addition, many states have deliberately created seamless application and client experiences for state/local and federal benefit

programs, as well as for Medicaid/CHIP benefits. These would need to be delinked and clients provided with clear information about whether the program they are participating in is subject to the public charge determination.

### **Health Impacts on Families and Children**

From 2013 to 2017, the uninsured rate in California dropped from 17 percent to under 7 percent. These coverage gains have allowed California's families to access regular health care and lead healthier lives. Healthy families are better able to assimilate and contribute to the U.S. economy, and it is vital that health center patients and their families continue to access medical care and other social services without fear of adverse immigration consequences.

Publicly-funded programs, like Medicaid and the Children's Health Insurance Program (CHIP), help families meet their children's basic needs and provide a buffer against the negative effects of adversity. Counties administer eligibility for these programs in California, as CHIP is embedded in our Medicaid program. CHIP is a program for working families who earn too much to be eligible for Medicaid without a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment or including it in the "public charge" definition, would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed above.

Increased medical costs are of particular concern in light of the proposed inclusion of Medi-Cal/Medicaid and Medicare Part D in public charge determinations. Medi-Cal and other public managed care are the largest providers of health care in California, covering 10.7 million individuals, compared to large group insurance, which covered 9.6 million individuals in 2017.<sup>12</sup> Together, Medicare and Medicaid provide health insurance for more individuals than small group and large group insurance combined. These figures indicate that private group insurance is not meeting the needs of California's population. More than 8 out of 10 Medi-Cal recipients are in a working household, but many do not have the option to receive health insurance through their employer.<sup>13</sup> This lack of provision by employers should not be a detriment to an individual or family's path toward citizenship. ACSSA strongly opposes the inclusion of Medicaid, Medicare Part D, or CHIP in public charge determinations.

In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social

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<sup>12</sup> Wilson, Katherine. State Releases Data on California 2017 Health Insurance Enrollment. California Health Care Foundation. <https://www.chcf.org/blog/state-releases-data-on-california-2017-health-insurance-enrollment/>

<sup>13</sup> Kaiser Family Foundation. Distribution of Nonelderly with Medicaid by Family Work Status, 2016. <https://www.kff.org/medicaid/state-indicator/distribution-by-employment-status-4/>



benefits of ensuring that these populations have access to care. Moreover, including CHIP, a benefit explicitly created for working families, in the public charge assessment would be contrary to the historical meaning of a public charge as a person who depends on the government rather than working.

Reducing access to these programs – either directly through the rules changes or indirectly through the chilling effect the rule would have – would be harmful to children’s development and have implications for their well-being into adulthood. For example, children enrolled in Medicaid in their early years not only do better in childhood than children without health insurance, but also have better health, educational, and employment outcomes in adulthood.<sup>14</sup> Additionally, uninsured children are less likely to receive preventive care and necessary treatment when they are sick or injured, and are generally less healthy compared to children with health insurance.<sup>15</sup> Thus, treating health programs as a negative factor in the public charge assessment would have the paradoxical effect of making children less able to contribute as adult workers. If this proposed rule were to be implemented, we will see negative health ramifications in our immigrant children and families since they would be discouraged of enrolling into publicly funded insurance programs, like Medicaid and CHIP.

For all of these reasons, we strongly oppose adding any additional programs to the totality of circumstances test.

#### **Conclusion: Urge withdrawal of proposed rule**

DHS notes in the NPRM that the following consequences are possible: increased rates of poverty and housing instability, and reduced productivity and educational attainment. We agree with these findings and expected outcomes and argue that these costs to society are not worth the reduction in public benefit use. As illustrated by the data presented in the NPRM, immigrants do not access public benefit programs at higher rates than native-born citizens. Human needs do not change based on immigration status. Public benefit programs, including Medicaid, CHIP, SNAP, and Housing Support programs are a vital component of the social safety net, which allows individuals and families to thrive, even when broader economic conditions make self-sufficiency without some degree of support beyond the reach of many. Because use of public benefits does not indicate “primary dependence” on the government for daily needs, and due to the health and economic consequences expected from this proposed rule, ACSSA asks that DHS immediately withdraw the NPRM, and abolish the current interpretation of public charge for immigration purposes.

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<sup>14</sup> Rourke O’Brien and Cassandra Robertson, *Medicaid and Intergenerational Economic Mobility*, University of Wisconsin—Madison, Institute for Research on Poverty, 2015, <https://search.library.wisc.edu/catalog/9910223409002121>; Andrew Goodman-Bacon, *The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes*, NBER Working Paper No. 22899, 2016, [www.nber.org/papers/w22899](http://www.nber.org/papers/w22899).

<sup>15</sup> Amanda R. Kreider, Benjamin French, Jaya Aysola, et al., “Quality of Health Insurance Coverage and Access to Care for Children in Low-Income Families,” *JAMA Pediatrics* 170 (2016).

If you have any questions, please feel free to contact Policy Director, Anissa Basoco-Villarreal at (510) 271-9181 or by email [abvillarreal@acgov.org](mailto:abvillarreal@acgov.org).

Sincerely,

A handwritten signature in black ink, appearing to be 'Lori A. Cox', with a long horizontal stroke extending to the right.

Lori A. Cox  
Agency Director  
Alameda County Social Services Agency

Cc: Alameda County Board of Supervisors  
Alameda County Department Heads  
CA Welfare Directors Association (CWDA)  
CA Congressional Representatives