



December 7, 2018

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

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

Dear Ms. Samantha Deshommnes:

As an organization dedicated to ensuring equitable access to critical health services to individuals and communities affected by HIV/AIDS, tuberculosis (TB), and hepatitis C virus (HCV), Treatment Action Group (TAG) strongly opposes the proposed changes regarding “public charge,” published in the Federal Register on October 10, 2018 (the proposed rule). The proposed rule would put the health and well-being of immigrants and their families at great risk and result in catastrophic public health implications for localities, states, and health care providers and facilities. We urge the DHS to immediately and explicitly withdraw the proposed rule in its entirety.<sup>i</sup>

The proposed rule would dramatically alter existing policy on the public charge test, in contradiction to available evidence on its damaging consequences on the nation. The proposed rule radically expands the definition of “public charge” to include any immigrant who simply “receives one or more public benefits.” This change in definition broadens the types of benefits that could be considered under a “public charge” determination to include programs critical to ensuring access to healthcare, nutrition and housing for vulnerable communities—such as Medicaid, Supplemental Nutrition Assistance Program (SNAP), Medicare Part D Low Income Subsidy, and Federal Public Housing. The use of these public assistance programs, among other related factors, are included in review of the “totality of circumstances” when an applicant is seeking a permanent legal status. These programs are critical stepping stones to helping new Americans achieve self-sufficiency, supporting their children, and, ultimately, saving the American public due to the well-established cost-saving effect of early interventions for health, nutrition, and housing. Taking them away will not only harm prospective new U.S. residents by deterring them from seeking key services, but will wind up costing the public in the long-run, as unaddressed conditions worsen and impact broader communities.

The proposed rule also establishes other massive changes, such as an unprecedented income test, and weighing negatively many factors (i.e. health status) that have never been solely used to determine an applicant’s future self-sufficiency. Currently, applicants seeking adjustment of legal status or entry as a permanent resident already must undergo an I-693 Medical Exam by a civil surgeon who reports on the health status of the individual. Under the public charge test, conditions reported under Class A, including

ones that are treatable and curable such as TB, could be irrationally held against status-adjusters. The additional requirement for medical examiners to report on, “evidence of a medical condition that is likely to require extensive medical treatment or institutionalization after arrival, or that will interfere with the alien's ability to care for him- or herself, to attend school, or to work” to factor into determinations about public charge is problematic. Counting conditions that require extensive medical treatment and/or hospitalization as negative factors in assessing an application ignores the reality that a Class A or B medical condition—especially a curable one—is not an accurate indicator of future self-sufficiency and full-time employment capabilities. For example, Class B conditions—which are considered under the totality of circumstances—include disability, which makes this proposed rule discriminatory. Additionally, we fear that the list of medical conditions included in the I-693 Medical Exam may be subject to additions independently after finalization of the proposed rule, threatening the hard-won progress towards ending many epidemics in the U.S.

Additionally, under the proposed rule, applicants with a chronic health condition would be required to have non-Medicaid health insurance, or the ability to pay for their own treatment. Treatment for HIV/AIDS, TB, and HCV is prohibitively expensive in the U.S. Requiring individuals to pay for their own treatment will render many unable to get care, thereby jeopardizing their health and the health of others. Even the specter of the proposed rule may be perversely incentivizing applicants to terminate or decline life-saving, but publicly-supported, healthcare in order to remain eligible to adjust their status.

This widespread “chilling effect” that causes immigrants and their families to withdraw from benefits due to fear is already evident as a result of rumors of the rule. Community providers and state health officials have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the proposed rule.<sup>ii</sup>

With one in four American children having at least one immigrant parent, and the undeniable connection between the well-being of children and parents, the proposed is also creating a significant ripple effect on children and other household members. Experts estimate that this chilling effect would extend to 24 million people in the U.S., including 9 million children who are U.S. citizens.<sup>iii</sup> As a result, millions of children could lose access to essential benefits. Likewise, the reduction in support to families could hurt national and local economies, causing a potential loss of a \$24.1 billion in spending if families disenroll from critical programs.<sup>iv</sup> The economic impact would weigh most heavily on states with large immigrant populations and those with inclusive public-benefit policies.<sup>v</sup>

Lastly, the proposed rule would have a disproportionate impact on marginalized groups, including LGBTQ people, who face significant discrimination when seeking housing and employment,<sup>vi</sup> and who are often not protected under relevant anti-discrimination laws.<sup>vii</sup> As a direct result of such discrimination, LGBTQ people are significantly more likely to experience unemployment and food insecurity<sup>viii</sup> and often must turn to public benefits in order to survive.<sup>ix</sup> The administration should not be punishing those who have already experienced the most hardship, but instead should be helping them thrive with increased opportunity.

Given the undeniable and detrimental consequences the proposed rule would impart—and are already having—on the health and well-being of immigrants and their families, the DHS should immediately and publicly withdraw its current proposal of the proposed rule. Instead of adopting this proposed rule, or allowing it to remain indefinitely as a proposed rule without explicitly withdrawing it (which would have similar consequences in creating confusion and deterring people from seeking lawful and life-saving

benefits), the Department of Homeland Security should dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. No one should be asked to choose between seeking vital health care and other supportive services and advancing their prospects of gaining permanent residency in the U.S. We must ensure services and support are provided for communities to remain healthy and productive, and continue to foster diversity as our nation’s strength.

We thank you for the opportunity to submit comments on the proposed rulemaking, and hope that you will take swift action to prevent further damage and mitigate what is already done. Please do not hesitate to contact Erica Lessem at [erica.lessem@treatmentactiongroup.org](mailto:erica.lessem@treatmentactiongroup.org) for further information.

Treatment Action Group (TAG)

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<sup>i</sup> U.S. Citizenship and Immigration Services (U.S.). Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99] [Internet]. 1999 May 26. Available from: <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>.

<sup>ii</sup> Goldberg D, Colliver V, & Rayasam R. ‘Public charge’ rule keeping immigrants from health care. 2018 November. Available from: <https://subscriber.politicopro.com/health-care/article/2018/11/public-charge-rule-keeps-immigrants-away-from-health-programs-advocates-say-960797>.

<sup>iii</sup> Fiscal Policy Institute (U.S.). “Only Wealthy Immigrants Need Apply” How a Trump Rule’s Chilling Effect Will Harm the U.S. Fiscal Policy Institute [Internet]. 2018 October 10. Available from: <http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf>.

<sup>iv</sup> Batalova J, Fix M, & Greenberg M. Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use. Migration Policy Institute [Internet]. 2018 June. Available from: <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

<sup>v</sup> Ibid.

<sup>vi</sup> Sejal Singh and Laura E. Durso, “Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways,” (Center for American Progress, 2017)

<sup>vii</sup> Movement Advancement Project, “Local Employment Nondiscrimination Ordinances,” 2015. <http://lgbtmap.org/file/policy-spotlight-local-NDOs.pdf>

<sup>viii</sup> Lourdes Ashley Hunter, Ashe McGovern, and Carla Sutherland, Eds, *Intersecting Injustice: Addressing LGBTQ Poverty and Economic Justice for All: A National Call to Action*, 2018 [https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FIN+AL+PovertyReport\\_HighRes.pdf](https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FIN+AL+PovertyReport_HighRes.pdf).

<sup>ix</sup> Caitlin Rooney, “Protecting Basic Living Standards for LGBTQ People,” (Center for American Progress 2018) <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>