

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY



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Via Federal eRulemaking Portal

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

RE: DHS Docket No. USCIS-2010-0012

Dear Ms. Deshommès:

The California Health and Human Services Agency (CHHS), along with the California Department of Health Care Services (DHCS), California Department of Public Health (CDPH), and the California Department of Social Services (CDSS), submit the following comments, for your consideration, on the Proposed Rule entitled, *Inadmissibility on Public Charge Grounds* (83 Fed. Reg. 51114 (Oct. 10, 2018)), RIN 1615-AA22 (Proposed Rule).

If finalized in its current form, the Proposed Rule will directly and adversely impact the health and well-being of millions of Californians who are subject to public charge determinations and their families. It will also indirectly and adversely impact the health and well-being of individuals and families who are neither subject to the Proposed Rule nor related to individuals who are subject to the Proposed Rule. The Proposed Rule also changes U.S. immigration policy by making it even more difficult to administer while damaging and disrupting public health and social services programs vital to low-income Californians.

To understand the size and demographic make-up of the population that will be affected in California, it is important to consider the following figures. California is the world's 5th largest economy¹, a state with nearly 40 million people² and a large immigrant population that is critical

¹ Associated Press, [California is now the world's fifth-largest economy, surpassing United Kingdom](#), L.A. TIMES (May 4, 2018, 1:50 PM); U.S. Department of Commerce, Bureau of Economic Analysis, *News Release* (Nov. 14, 2018), <https://www.bea.gov/system/files/2018-11/qgdpsstate1118.pdf> (gross domestic product of more than \$2.93 trillion).

² United States Census Bureau, <https://www.census.gov/quickfacts/ca> (last visited Nov. 16, 2018).

to the state’s economy. Twenty-seven percent of California’s population, approximately 10 million people, are foreign born. One in two children has at least one immigrant parent.³ In California, 74 percent of non-citizens live in households that also have citizens.⁴ Nearly 12 percent of the state’s total population—about 4.7 million people—live with an undocumented family member, including about 2 million children younger than 18 years old.⁵

Additionally, immigrant workers are an important part of California’s robust economy. They contribute approximately 32 percent of California’s Gross Domestic Product, which amounts to approximately \$715 billion.⁶ Immigrants account for: more than 35 percent of California’s civilian, non-institutional workforce; more than 66 percent of all agricultural workers; almost 50 percent of all workers in the manufacturing industry; and more than 40 percent of all workers in the wholesale trade, construction, and other service industries.⁷

For the reasons explained below, Proposed Rule will have a negative impact on California’s immigrant population as well as significant and damaging ripple effects on the health and well-being of nearly all Californians and the overall strength of the California economy.

I. The Proposed Rule has Numerous Inconsistencies that Call Into Question and Undermine Its Stated Goals of Ensuring Self-Sufficiency on the Part of Individuals Subject to Public Charge, Creating a Clearer Legal Framework for Public Charge Determinations, and Achieving Cost Savings.

Under the Department of Homeland Security’s (DHS) current public charge determination process,⁸ which was developed by the former Immigration and Naturalization Service (INS), a “public charge” is an alien “who is likely to become primarily dependent on the Government for subsistence, as demonstrated by either: (i) The receipt of public cash assistance for income maintenance purposes, or (ii) Institutionalization for long-term care at Government expense.”⁹ In the materials explaining this definition, INS made clear that, under this “primarily dependent” standard, an alien’s receipt of public benefits other than public cash assistance and institutionalization for long-term care was irrelevant for public charge purposes and would not be

³ Hans Johnson and Sergio Sanchez. *Just the Facts: Immigrants in California*. Public Policy Institute of California, May 2018; United States Census Bureau, https://www.census.gov/newsroom/pdf/cspan_fb_slides.pdf (last visited Nov. 29, 2018).

⁴ Jon Rodney et al. *Resilience in the Age of Inequality: Immigrant Contributions to California*. California Immigrant Policy Center.

⁵ Silva Mathema, *Keeping Families Together*, CENTER FOR AMERICAN PROGRESS (Mar. 16, 2017).

⁶ Jon Rodney et al., *Resilience in the Age of Inequality: Immigrant Contributions to California*, CALIFORNIA IMMIGRANT POLICY CENTER 1, 3, [https://irvine-dot-org.s3.amazonaws.com/documents/236/attachments/Resilience in an Age of Inequality Immigrant Contributions to California.pdf?1487896536](https://irvine-dot-org.s3.amazonaws.com/documents/236/attachments/Resilience%20in%20an%20Age%20of%20Inequality%20Immigrant%20Contributions%20to%20California.pdf?1487896536), (last visited Nov. 18, 2018).

⁷ Jon Rodney et al., *Resilience in the Age of Inequality: Immigrant Contributions to California*, CALIFORNIA IMMIGRANT POLICY CENTER 2, [https://irvine-dot-org.s3.amazonaws.com/documents/236/attachments/Resilience in an Age of Inequality Immigrant Contributions to California.pdf?1487896536](https://irvine-dot-org.s3.amazonaws.com/documents/236/attachments/Resilience%20in%20an%20Age%20of%20Inequality%20Immigrant%20Contributions%20to%20California.pdf?1487896536), (last visited Nov. 18, 2018).

⁸ See Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114, 51133 (Oct. 10, 2018).

⁹ As DHS is aware, this definition is enshrined in an INS proposed rule that was never finalized (64 Fed.Reg. 28676, 28681 (May 26, 1999)), as well as field guidance directed to immigration officers (Field Guidance). (64 Fed.Reg. 28689, 28692 (May 26, 1999).)

considered by immigration officers.¹⁰ The U.S. Citizenship and Immigration Services (USCIS), a component of DHS, continues to apply this standard.¹¹

The Proposed Rule introduces an alternative definition of “public charge,” defining a public charge as “an alien who receives one or more” of the enumerated public benefits identified in the Proposed Rule.¹² The new definition of “public benefit” sets forth a list of enumerated benefits that must be considered for public charge purposes, including, but not limited to:

- (1) “Monetizable” cash-assistance benefits, such as federal, state, or local cash assistance for income maintenance, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF);
- (2) “Monetizable” non-cash benefits, such as benefits under the Supplemental Nutrition Assistance Program (SNAP) and various housing and rental assistance programs administered by the U.S. Department of Housing and Urban Development (HUD); and
- (3) “Non-monetizable” non-cash benefits, such as institutionalization for long-term care at government expense, subsidized housing under the Housing Act of 1937, and non-emergency Medicaid.¹³

This proposed list of enumerated public benefits that immigration officers would consider as part of their public charge determinations represents a significant expansion on, and departure from, current public charge policy. For the reasons explained more fully below, these changes are unwarranted and divorced from the INA’s text, the other immigration statutes cited in the Proposed Rule, and from DHS’s experiences as a federal agency.

As DHS notes,¹⁴ under Executive Order 12866, “[f]ederal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.”¹⁵ In order to ensure that regulatory agencies promulgate regulations that are consistent with this principle, Executive Order 12866 states that federal agencies should, among other things, “identify the problem that it intends to address,” “design its regulations in the most cost-effective manner to achieve the regulatory objective,” and “assess both the costs and the benefits of the intended regulation.”¹⁶

¹⁰ 64 Fed. Reg. at 28682 (“The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense.”); *id.* at 28689 (“[O]fficers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.”).

¹¹ 83 Fed.Reg. at p. 51133.

¹² 83 Fed. Reg. at 51289.

¹³ 83 Fed. Reg. at 51289-90. In addition to setting out these enumerated benefits, DHS has specifically requested public comment as to whether benefits provided under the Children’s Health Insurance Program (CHIP) should be considered for public charge purposes. *Id.* at 51174. CHIP benefits should be explicit exempted from any final public charge rule promulgated by DHS for the reasons explained below. *See infra* Part IV.

¹⁴ 83 Fed. Reg. at 51227.

¹⁵ Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

¹⁶ Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

DHS sets out three main reasons for overhauling existing public charge policy in the manner contemplated by the Proposed Rule: (a) ensuring self-sufficiency; (b) increasing legal clarity; and (c) achieving cost savings. However, the proposed regulatory changes are not rationally tied to evidence or experience, and the proposed regulatory changes would undermine rather than advance the three stated goals.

A. Self-Sufficiency: The Proposed Rule’s Significant Departure From Current Public Charge Policy Does Not Appear to Be Supported by Law, Evidence, or Experience.

DHS indicates that the Proposed Rule is designed to “adequately ensure the self-sufficiency of aliens subject to the public charge ground of inadmissibility.”¹⁷ More specifically, DHS asserts that “its proposed definition reflects Congress’s intent in having aliens be *self-sufficient and not reliant on the government (i.e., public benefits) for assistance to meet their needs.*”¹⁸ DHS also indicates that current public charge policy does not “adequately ensure the self-sufficiency of aliens subject to the public charge ground of inadmissibility.”¹⁹ In several instances, DHS identifies the Proposed Rule’s purported promotion of “self-sufficiency” as its “primary benefit.”²⁰

However, the relevant enabling provision, section 212(a)(4) of the INA, does not mention or discuss “self-sufficiency,” let alone identify self-sufficiency as a criterion for avoiding a finding of inadmissibility under public charge.²¹ DHS recognizes as much, stating:

Although *the INA does not indicate that aliens seeking an extension of stay or change of status must establish self-sufficiency*, consideration of such alien’s self-sufficiency aligns with the aforementioned policy statements set forth in [the Personal Responsibility and Work Opportunity Reconciliation Act of 1996].²²

As DHS is aware,²³ the 104th Congress passed both the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) within approximately one month of each other in August and September 1996.²⁴ Relevant here, while PRWORA significantly restricted immigrants’ eligibility for federal, state, and local public benefits,²⁵ IIRIRA codified the minimum mandatory factors considered when making public charge determinations, which include (1) age,

¹⁷ 83 Fed. Reg. at 51276; *see also id.* at 51118.

¹⁸ 83 Fed. Reg. at 51158 (emphasis added); *see also id.* at 51123 (“This proposed rule would improve upon the 1999 Interim Field Guidance by removing the artificial distinction between cash and non-cash benefits, and aligning public charge policy with the self-sufficiency principles set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).”).

¹⁹ 83 Fed. Reg. at 51276.

²⁰ *See* 83 Fed. Reg. at 51118, 51229, 51234, 51274.

²¹ *See* 8 U.S.C. § 1182(a)(4).

²² 83 Fed. Reg. at 51136 (emphasis added).

²³ *See* 83 Fed. Reg. at 51126, 51132, 51197.

²⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

²⁵ *See* Pub. L. 104-193, § 401, 110 Stat. 2105 (stating that a “qualified alien,” as defined by statute, “is not eligible for any public benefit” except as set forth in the statute’s exceptions); 83 Fed. Reg. at 51126.

(2) health, (3) family status, (4) assets, resources, and financial status, and (5) education and skills.²⁶ PRWORA articulated the self-sufficiency principles on which the Proposed Rule heavily relies, including statements that self-sufficiency “has been a basic principle of United States immigration law since this country’s earliest immigration statutes” and that it is U.S. policy that “aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.”²⁷

Both PRWORA and IIRIRA pre-dated INS’s 1999 Field Guidance and were considered by INS when it developed the current public charge policy.²⁸ In fact, INS stated that it was promulgating the 1999 Field Guidance and proposed rule precisely because the enactment of PRWORA and IIRIRA had created widespread confusion about whether immigrants would be penalized for receiving benefits for which they remained eligible following the enactment of both laws in 1996.²⁹ INS also acknowledged that “the *absence* of a clear public charge definition [wa]s undermining the Government’s policies of *increasing access to health care and helping people to become self-sufficient*” and that it was promulgating the current public charge policy in order to “remedy this problem.”³⁰

The Proposed Rule does not identify post-1999 laws, data, or experience—e.g., congressional authorities or other information not already taken into account by INS in developing current public charge policy—that informed DHS’s development of the Proposed Rule. We therefore request that in DHS’s next public action on this Proposed Rule, DHS identify and describe what legal authorities or other information exist, apart from those that predated the 1999 Field Guidance and were relied on by INS in developing the current public charge policy, which DHS considered in developing its proposed definition of “public charge.”

The Proposed Rule admits, that it is the province of Congress, not DHS, to change the statutory eligibility requirements for various federally-administered public benefits programs, including the enumerated public benefits that the Proposed Rule seeks to incorporate into the public charge

²⁶ See Pub. L. No. 104-208, div. C, § 531, 110 Stat. 3009-546; 83 Fed. Reg. at 51132.

²⁷ Pub. L. 104-193, § 400(1)-(2), 110 Stat. 2105; see also 83 Fed. Reg. at 51122-23.

²⁸ See 64 Fed. Reg. at 28676 (identifying both PRWORA and IIRIRA when stating that “[r]ecent immigration and welfare reform laws have generated considerable public confusion about whether the receipt of Federal, State, or local public benefits for which an alien may be eligible renders him or her a ‘public charge’ under the immigration statutes governing admissibility” and noting that “PRWORA, known as the welfare reform law . . . imposed new restrictions on the eligibility of aliens, whether present in the United States legally or illegally, for many Federal, State, and local public benefits”); *id.* at 28689 (observing that “IIRIRA and the recent welfare reform laws have sparked public confusion about the relationship between the receipt of federal, state, local public benefits and the meaning of ‘public charge’ under the immigration laws. Accordingly, [INS] is taking two steps to ensure the accurate and uniform application of law and policy in this area. First, [INS] is issuing this memorandum which both summarizes longstanding law with respect to public charge and provides new guidance on public charge determinations in light of the recent changes in law. In addition, [INS] is publishing a proposed rule for notice and comment that will for the first time define ‘public charge’ and discuss evidence relevant to public charge determinations.”).

²⁹ See *supra*, n. 28; 83 Fed. Reg. at 28692 (asserting that INS proposed the current definition of public charge in part because “confusion about the relationship between the receipt of public benefits and the concept of ‘public charge’ has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare”).

³⁰ 64 Fed. Reg. at 28677 (emphasis added).

analysis.³¹ The regulatory framework contemplated by DHS, which is designed to achieve the same *effects* as changing eligibility requirements—decreased and foregone enrollment in public benefit programs³² by certain populations—usurps the role of Congress. If Congress wanted to achieve the self-sufficiency or cost-savings goals³³ identified by the Proposed Rule, it could alter the eligibility rules for the enumerated programs.³⁴ Congress has declined to do so, and in fact expanded eligibility for some programs following the enactment of PRWORA and IIRIRA in 1996. For example, in 2002, Congress restored SNAP eligibility for all qualified immigrant children.³⁵

In the Proposed Rule, DHS does not affirmatively address whether it consulted with federal benefit-granting agencies such as the U.S. Department of Health and Human Services (HHS), U.S. Department of Agriculture (USDA), and the U.S. Department of Housing and Urban Development (HUD) in developing its proposed definition of “public charge” as “an alien who receives one or more public benefit[s]”³⁶ and abandoning the current “primarily reliant” standard. While the Proposed Rule indicates that DHS consulted these benefit-granting agencies on other, tangential issues such as methodologies for considering and quantifying an immigrant’s receipt of non-cash, non-monetizable benefits,³⁷ we request that in the next public action on this Proposed Rule, DHS address whether or not it formally consulted federal benefit-granting agencies such as HHS, USDA, and HUD in developing its proposed definition of “public charge,” and if so, publicly disclose copies of any written feedback it received from these agencies.³⁸

Finally, we note that DHS appears to be inconsistent regarding when and how it justifies aligning the Proposed Rule with the immigration statutes enacted by Congress. On the one hand, DHS cites the INA’s limited scope to justify its decision to not consider the Proposed Rule’s impact on access to medical care and on the ability of immigrants to *become* self-sufficient, including through temporary reliance on government safety net programs. Specifically, the Proposed Rule states that although “DHS acknowledges the importance of increasing access to health care and helping people to become self-sufficient in certain contexts (such as with respect to other agencies’ administration of government assistance programs),” the INA “does not dictate advancement of

³¹ See 83 Fed. Reg. at 51266 (observing that the Proposed Rule does not change eligibility requirements for public benefit programs, only enrollment incentives); see also *id.* at 51132 (noting “the availability of public benefits to some aliens as set forth in PRWORA”).

³² 83 Fed. Reg. at 51264 (“DHS anticipates that a number of individuals would be likely to disenroll or forego enrollment in a public benefits program as a result of the proposed rule”); see also *id.* at 51270 (listing various negative impacts that may result from immigrants disenrolling or foregoing enrollment in public benefits programs for which they remain eligible.)

³³ We address the Proposed Rule’s statements on cost savings, and the many public health costs not accounted for by the Proposed Rule, elsewhere in this comment. *Infra* Parts I.C. and II.

³⁴ As DHS is aware, this is what occurred with the enactment of PRWORA. 83 Fed.Reg. at p. 51126.

³⁵ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 4401, 116 Stat. 134 (amending 8 U.S.C. § 1612(a)(2)(J) to restore eligibility for SNAP or “food stamp” benefits to all qualified alien children under age 18).

³⁶ 83 Fed. Reg. at 51289.

³⁷ See 83 Fed. Reg. at 51165 (“[F]ollowing consultation with interagency partners such as HHS and HUD, DHS lacks an easily administrable standard for assessing the monetary value of an alien’s receipt of some non-cash benefits”); *id.* at 51218 (“DHS has consulted with the relevant Federal agencies regarding the inclusion and consideration of certain monetizable benefits”). These statements do not clarify whether federal benefit-granting agencies such as HHS, USDA, and HUD were consulted as to the appropriateness of the Proposed Rule’s overhauled definition of “public charge.”

³⁸ This request is based on INS’s inclusion of the letters from HHS, USDA, and SSA as part of the appendix to its proposed rule in 1999. 64 Fed. Reg. at 28686-88.

those goals in the context of public charge inadmissibility determinations.”³⁹ On the other hand, DHS seeks to create a new self-sufficiency requirement in order to *exclude* immigrants from the United States even though the 104th Congress never imposed such a requirement under the INA despite its preoccupation with immigrants’ self-sufficiency at the time it drafted the INA’s minimum mandatory factors for public charge determinations. These two positions regarding the relevance of self-sufficiency (and congressional intent) to DHS’s public charge determinations cannot be reconciled. For these reasons, we urge DHS to withdraw the Proposed Rule.

B. Clarity: Current Public Charge Policy is Clearer and Simpler to Administer.

DHS states that the Proposed Rule is intended to “improve[e] the current review process,” “standardize the determination of inadmissibility based on public charge grounds,” and “establish a clear framework under which DHS would evaluate those factors to determine whether or not an alien is likely at any time in the future to become a public charge.”⁴⁰ However, on its face, the Proposed Rule is significantly more complicated and less clear—to the regulated public and to the immigration officers charged with its administration—than the current public charge policy.

Under existing public charge policy, immigration officers consider only two public benefits when determining whether an individual is likely to become a public charge because he or she is “primarily dependent on the Government for subsistence”: cash-assistance benefits and long-term care institutionalization at government expense.⁴¹ These two benefits were chosen because they provide substantial primary cash support to individuals unable to support themselves at all. No other public benefits are considered.⁴² In justifying the exclusion of other public benefits from consideration, INS observed that these other benefits—including Medicaid, CHIP, SNAP, and WIC—are “supplemental” in nature, “provided to low-income working families to sustain and improve their ability to remain self-sufficient,” and “frequently support the general welfare.”⁴³ The Field Guidance developed by INS, on which USCIS immigration officers currently rely,⁴⁴ recognizes that the existing simplicity of the public charge rule serves a critical function of ensuring benefits go to those entitled to them: specifically, “confusion about the relationship between the receipt of public benefits and the concept of ‘public charge,’” can deter “eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive.”⁴⁵

³⁹ 83 Fed. Reg. at 51158, n. 258.

⁴⁰ 83 Fed. Reg. at 51174.

⁴¹ 64 Fed. Reg. at 28682; 64 Fed. Reg. at 28689, 28692.

⁴² 64 Fed. Reg. at 28682 (“The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense. Institutionalization for short periods for rehabilitation purposes will not be considered. Non-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government.”); 64 Fed. Reg. at 28693 (“Non-cash benefits (other than institutionalization for long-term care) should not be taken into account in making public charge determinations, nor should special-purpose cash assistance that is not intended for income maintenance. Therefore, past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge.”).

⁴³ See 64 Fed. Reg. at 28677-79, 28682.

⁴⁴ 83 Fed. Reg. at 51133.

⁴⁵ 64 Fed. Reg. at 28692. The Proposed Rule largely ignores the issue of public confusion about eligibility, stating in Table 37 that “[t]he primary benefit of the proposed rule would be to ensure that aliens who are admitted to the United States or apply for adjustment of status would not use or receive one or more public benefits *which they are entitled to receive*, and instead, would rely on their financial resources, and those of family members, sponsors, and private organizations.” 83 Fed. Reg. at 51234 (emphasis added).

The Proposed Rule is significantly more complex than the existing framework. It creates a list of eight (rather than two) enumerated benefits that would be considered for public charge purposes.⁴⁶ These six additional benefits are administered by at least three different federal agencies—including HHS, USDA, and HUD—often in partnership with dozens of state and local governments.⁴⁷ The Proposed Rule fails to account for how these various benefit-granting agencies would inform recipients of the Proposed Rule’s implications, especially in a uniform and effective manner that would allow families to make informed choices about whether to apply for or receive benefits.

The added complexity does not stop there. In addition to expanding the list of benefits considered by immigration officers for public charge purposes, the Proposed Rule seeks to introduce two separate, threshold-based methodologies for determining whether an immigrant’s receipt of public benefits jeopardizes his or her “self-sufficiency”: a federal poverty guidelines (FPG)-based threshold for monetizable benefits and a durational threshold for non-monetizable benefits.⁴⁸ In justifying adoption of these methodologies, as well as a third methodology used to account for the receipt of a combination of monetizable and non-monetizable benefits,⁴⁹ the Proposed Rule cites DHS’s “belief” that receipt of virtually *any* government support should direct the public charge determination:

[R]eceipt of [enumerated public 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. This is because a person with limited means to satisfy basic living needs who uses government assistance to fulfill such needs frequently will be dependent on such assistance to such an extent that the person is not self-sufficient.⁵⁰

The Proposed Rule does not cite any underlying data or legal authority not already in effect when current public charge policy was implemented in 1999 in support of this “belief,”⁵¹ or indicate that this “belief” is informed by consultation with federal benefit-granting agencies such as HHS and USDA, as is the case with current public charge policy.⁵² And it is difficult to imagine how such a belief could be supported, as it flies in the face of prior federal policy and experience that access

⁴⁶ 83 Fed. Reg. at 51289-90. We consider the three types of cash-assistance benefits that are already considered under current public charge policy (Supplemental Security Income, TANF, and government cash benefit programs for income maintenance) to be one enumerated benefit.

⁴⁷ 83 Fed. Reg. at 51133, 51167-68, 51174, 51270, 51290.

⁴⁸ 83 Fed. Reg. at 51289-90; *see also id.* at 51165-66.

⁴⁹ 83 Fed. Reg. at 51166.

⁵⁰ 83 Fed. Reg. at 51164

⁵¹ We discuss the Proposed Rule’s reliance on legal authorities that pre-date the 1999 Field Guidance, and were accounted for by INS in developing its proposed rule and Field Guidance, in an earlier Part of this comment letter. *Supra* Part I.A.

⁵² *See* 64 Fed. Reg. at 28692 (Field Guidance stating that INS arrived decided on the two types of benefits that it would consider for public charge purposes “[a]fter extensive consultation with benefit-granting agencies”), 28677 (noting consultation with HHS, SSA, and USDA), 28686-88 (appendix setting out letters from high-ranking federal officials within HHS, SSA, and USDA); *see also* 83 Fed. Reg. at 51133 (discussing INS’s consultation with federal benefit-granting agencies when developing current public charge policy). The Proposed Rule’s only references to consultation with these agencies appear to be confined to the appropriateness of the Rule’s proposed methodologies for considering monetizable and non-monetizable benefits, not the propriety of the public charge definition itself. *See* 83 Fed. Reg. at 51165-66, 51218.

to certain government benefits often advances, rather than undermines, the ultimate self-sufficiency of those who may, for a time, need such benefits to get on their feet.

The Proposed Rule further muddies the waters by considering the mere *application* for benefits as relevant to the public charge analysis. Table 33 to the Proposed Rule sets out in some detail the “Totality of the Circumstances Framework for Public Charge Determinations” that would apply if the Proposed Rule were finalized in some detail and identifies several examples of when an immigrant’s application or certification for public benefits would be considered in making a public charge determination even though no benefit was actually received. DHS’s proposed methodology for weighing the actual receipt of public benefits, as well as the absence of benefits received, applied for, certified, or approved also assigns different weights to each positive or negative factor.⁵³ And even as to “receipt” of funds, the rule is needlessly complicated: and directs immigration officers to use the receipt of enumerated public benefits as a “negative” or “heavily weighted negative factor” at *multiple* points during the public charge analysis.⁵⁴ Despite the Proposed Rule’s purported goal of establishing a “clear framework” for making public charge determinations, this framework is significantly less clear, and more unwieldy, than the existing “primarily dependent” framework and its examination of *receipt* of (and not application or certification for) two (rather than eight) public benefits.

As described in more detail *infra* Part II.A., the Proposed Rule’s lack of clarity and increased complexity will likely contribute to disenrollment by immigrants (citizens and non-citizens alike) who are eligible for benefits yet choose to forego them due to uncertainty about the potential consequences. Thus, the Proposed Rule will undermine rather than advance Congressional intent that eligible immigrants *access* benefits, including medical and nutritional benefits, that help them become more self-sufficient and that protect and advance the public health and welfare for the community at large.

Considering DHS’s acknowledgement that the Proposed Rule is likely to affect enrollment decisions for persons that the rule cannot regulate (like the U.S. citizen children of immigrant parents),⁵⁵ DHS’s decision not to account, and take responsibility, for preventing unwarranted disenrollment due to confusion about the Proposed Rule’s applicability, is, shortsighted at best. As demonstrated by INS’s experiences in the 1990’s (described *infra* Part I.A), without clarification from the government, significant confusion about the applicability of new public charge rules can occur even under a much simpler framework. Therefore, we request that DHS withdraw the Proposed Rule.

⁵³ 83 Fed. Reg. at 51211-15.

⁵⁴ See 83 Fed. Reg. at 51291-92, 51211-15; see also *id.* at 51188 (“DHS . . . proposes to consider any current and past receipt of public benefits . . . as a negative factor in the totality of the circumstances”), 51198 (“DHS proposes that current receipt of one or more public benefits . . . would be a heavily weighed negative factor in a public charge inadmissibility determination”). In explaining the multiple touch points at which the receipt of public benefits could be considered for purposes of public charge, the Proposed Rule states “[f]or example, the receipt of a public benefit 5 years ago would be a negative factor; however, a public benefit received six months before the adjustment of status application would be considered a heavily weighed negative factor.” *Id.* at 51200.

⁵⁵ 83 Fed. Reg. at 51228, 51260 (“Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households.”), 51277 (“DHS has determined that the proposed rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children.”).

C. Cost-Savings: The Proposed Rule’s Narrow View of Cost-Savings Fails to Account for, or Attempt to Ameliorate, Costs Likely to Result from the Proposed Rule Itself, Including Costs Related to Poorer Health Outcomes.

As a third goal, the Proposed Rule identifies cost-savings through the targeting of, and decreased enrollment in, high-expenditure public benefits programs.⁵⁶ In this regard, the Proposed Rule indicates that “DHS considers the current [public charge] policy’s focus on cash benefits to be insufficiently protective of the public budget, particularly in light of significant public expenditures on non-cash benefits.”⁵⁷ However, if all costs are correctly taken into account, the Proposed Rule will result in *cost increases* rather than cost savings.

Separate and apart from its discussion of potential cost-savings achieved by the Proposed Rule, DHS acknowledges that the Proposed Rule may cause a number of “non-monetized potential consequences,” including:

- (1) Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- (2) Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- (3) Increased prevalence of communicable diseases, including among members of the U.S. citizen population;
- (4) Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- (5) Increased rates of poverty and housing instability; and
- (6) Reduced productivity and educational attainment.⁵⁸

Additionally, the Proposed Rule acknowledges that there may be “downstream and upstream impacts on state and local economies, large and small businesses, and individuals”, due to the decreases in spending associated with this rule.⁵⁹ For example, a decrease in SNAP and WIC participation leads directly to a decrease in spending in California’s retail and agricultural industries. Similarly, fewer rental subsidies means less rent money for landlords.

Despite identifying these potential consequences, the Proposed Rule does not substantively engage with, let alone suggest, strategies for avoiding or ameliorating the costs *imposed* by the Rule’s

⁵⁶ 83 Fed. Reg. at 51173 (stating that the proposed definition of public charge “is based on DHS’s preference to prioritize those programs that impose the greatest cost on the Federal government as well as those programs that assist an individual with satisfying basic living needs”); *see also id.* at 51160 (“Cash aid and non-cash benefits directed toward food, housing, and healthcare account for significant federal expenditure on low-income individuals and bear directly on self-sufficiency In addition to federal expenditure impact, participation rates in these cash and non-cash benefits programs are significant.”), 51167-68, 51172 (identifying SNAP, Medicaid, and housing and rental assistance programs administered by HUD as high expenditure programs warranting inclusion under the Proposed Rule), 51117 (asserting that the Proposed Rule would “result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program”).

⁵⁷ 83 Fed. Reg. at 51164.

⁵⁸ 83 Fed. Reg. at 51270.

⁵⁹ (83 Fed.Reg. at p. 51269.)

changes to public charge.⁶⁰ It also fails to acknowledge that in some cases, the associated economic losses are significantly greater than the corresponding savings on foregone benefits.⁶¹

As the Proposed Rule notes, INS promulgated the current definition of public charge in order to address “immigrants’ fears of accepting public benefits for which they remained eligible, specifically in regards to medical care, children’s immunizations, basic nutrition and treatment of medical conditions that may jeopardize public health.”⁶² To aid DHS’s decision-making, and to support our request that the Proposed Rule be withdrawn, we discuss the Proposed Rule’s potential adverse impacts on the public’s health and general welfare, in addition to some of the likely federal and state costs associated with the Rule, in Part II of this comment.

II. The Proposed Rule Will Have Broad Detrimental Impacts on Citizens and Non-Citizens Alike in California and Beyond.

In promulgating the current public charge policy, INS acknowledged that changes to public charge law that cause immigrants to withdraw from or forego enrollment in public benefits programs for which Congress has deemed them statutorily eligible can have significant adverse impacts on the public’s health and well-being.⁶³ This remains as true today as it was when the current public charge policy was first promulgated. This Part identifies and discusses some of the most important and far-reaching of those adverse impacts.

A. The Proposed Rule Will Chill Use of Important Benefits by Those Who Need and Are Entitled to Them in Contravention of Congressional Intent.

The complexity and uncertainty created by the Proposed Rule will lead to a chilling effect, causing immigrants who are eligible for benefits—including refugees, asylees,⁶⁴ lawful permanent residents (LPRs),⁶⁵ and U.S. citizens not regulated by the Proposed Rule—to forego benefits to which they are entitled, in contravention of Congressional intent. In this respect, the Proposed Rule

⁶⁰ See 83 Fed. Reg. at 51236 (stating, without further explanation, that DHS “was not able to estimate potential lost productivity, health effects, additional medical expenses due to delayed health care treatment, or increased disability insurance claims as a result of this proposed rule”); see also *id.* at 51270 (setting forth the list of “non-monetized potential consequences” then, without account for the costs imposed by potential consequences identified, requesting comments on “other possible consequences”).

⁶¹ See http://www.cafoodbanks.org/sites/default/files/factsheet_econantihungersnap_hyperlinks_121916.pdf.

⁶² 83 Fed. Reg. at 51133; see also 64 Fed. Reg. at 28676-77 (“According to Federal and State benefit-granting agencies, this growing confusion [around the meaning of “public charge” following the enactment of PRWORA and IIRIRA] is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children’s immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who decline immunization services increase In short, the absence of a clear public charge definition is undermining the Government’s policies of increasing access to health care and helping people to become self-sufficient.”); *id.* at 28692 (noting that immigrants’ uncertainty about the status of public charge law and their resulting reluctance to receive public benefits for which they remained eligible was having “an adverse impact not just on the potential recipients, but on public health and the general welfare”).

⁶³ See 64 Fed. Reg. at 28676-77, 28680; 64 Fed. Reg. at 28689, 28692.

⁶⁴ As DHS acknowledges, by statute, refugees and asylees are exempt from the public charge ground of inadmissibility. See 8 U.S.C. § 1157(c)(3); 8 U.S.C. § 1159(c); 83 Fed. Reg. at 51156, 51292.

⁶⁵ As the Proposed Rule tacitly acknowledges, except in very limited circumstances, LPRs are not considered applicants for admission and generally are not subject to public charge determinations. See 83 Fed. Reg. at 51127, n. 68 & 73, 51135, n. 176, 51223.

will accomplish an improper purpose: achieving indirectly an outcome that could not be achieved directly without Congressional action. DHS lacks the authority to change *eligibility* for the enumerated public benefits set forth in the Proposed Rule.⁶⁶ However, the Proposed Rule clearly contemplates that its proposed changes to the current public charge policy will affect eligible immigrants' decisions around *enrollment*, notwithstanding Congressional intent to continue providing the enumerated benefits to these individuals.⁶⁷

Past experience confirms that a chilling effect will occur if the Proposed Rule is finalized. When Congress restricted immigrant access to public benefits programs under PRWORA's welfare reform provisions, there were significant decreases in immigrant enrollment in several of the public benefits programs for which certain immigrant populations remained eligible.⁶⁸ A 1998 study in Los Angeles County showed that approved applications by legally-present immigrants for California's Medicaid and TANF programs fell by as much as 71 percent between January 1996 and January 1998, despite the fact that there was no decline in approved applications filed by citizens.⁶⁹ This drop in approved applications occurred even though there was no legal change to those immigrants' eligibility for California's Medicaid and TANF programs and even though the overall denial rates in Los Angeles County did not change during the time period examined.⁷⁰

More recently, an October 2018 report by the Kaiser Family Foundation advised that nearly all non-citizens who entered the U.S. without LPR status (94 percent) would have at least one characteristic that, under the Proposed Rule, could be treated as a negative factor in a public charge determination.⁷¹ The report also observed an effect that the Proposed Rule contemplates⁷² but does not quantify or explain: that the Proposed Rule's anticipated changes to current public charge policy are likely to affect not only non-citizens without LPR status who are subject to public charge determinations, but also "a broader group of enrollees in immigrant families, including their primarily U.S. born children, due to increased fear and confusion."⁷³ According to the California Health Care Foundation, "[e]ven though the [Proposed Rule] is not retroactive, it has caused public confusion and reportedly led families to withdraw from benefits out of fear that they will be

⁶⁶ 83 Fed. Reg. at 51266.

⁶⁷ See 83 Fed. Reg. at 51266. ("PRWORA was directly changing eligibility requirements, whereas this proposed rule, if finalized, would change enrollment incentives."), 51270 (observing that the Proposed Rule may lead to "[d]isenrollment or foregoing enrollment in public benefits program[s] by aliens otherwise eligible for these programs").

⁶⁸ See generally Wendy Zimmerman & Michael E. Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County* (July 1, 1998) URBAN INSTITUTE, <https://www.urban.org/sites/default/files/publication/70761/407536-Declining-Immigrant-Applications-for-Medi-Cal-and-Welfare-Benefits-in-Los-Angeles-County.pdf>.

⁶⁹ Wendy Zimmerman & Michael E. Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County* (July 1, 1998) URBAN INSTITUTE, <https://www.urban.org/sites/default/files/publication/70761/407536-Declining-Immigrant-Applications-for-Medi-Cal-and-Welfare-Benefits-in-Los-Angeles-County.pdf>.

⁷⁰ Wendy Zimmerman & Michael E. Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County* (July 1, 1998) URBAN INSTITUTE, <https://www.urban.org/sites/default/files/publication/70761/407536-Declining-Immigrant-Applications-for-Medi-Cal-and-Welfare-Benefits-in-Los-Angeles-County.pdf>.

⁷¹ Samantha Artiga et al., *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* (Oct. 11, 2018) HENRY J. KAISER FAMILY FOUNDATION, <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.

⁷² 83 Fed. Reg. at 51228, 51260, 51277.

⁷³ Samantha Artiga et al., *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* (Oct. 11, 2018) HENRY J. KAISER FAMILY FOUNDATION, <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>.

penalized in immigration considerations if family members have received Medicaid, [SNAP], or other forms of government assistance.”⁷⁴

Our agencies are charged with serving citizens and non-citizens alike who are eligible for the public benefits programs targeted by the Proposed Rule. Given this background, and the increased complexity of the public charge determination under the Proposed Rule, history will repeat itself if the Proposed Rule is promulgated as currently drafted. As described in the Parts below, the Proposed Rule’s harmful impacts on enrollment will extend far beyond the apparent target community of non-citizen immigrants, and will have profound public health, economic, and social consequences for California and beyond.

B. The Proposed Rule Will Disproportionately Impact Vulnerable Communities.

The Proposed Rule puts at risk not just those unfairly targeted by the Proposed Rule but also their extended families and communities due to the deteriorating life conditions that result from the loss of public assistance by those around them. The detrimental effects of individuals deciding to go without health care, nutrition services, housing assistance and other public support services would be felt across the State. A child who arrives to school hungry does not just see his or her education and future earning abilities impacted; the impact is also felt by educators, student peers and the broader state economy. Many of the vulnerable populations who would be impacted by this rule, including children, seniors, and working parents, already face the daily challenges of living in poverty. Given the high cost of living and rising cost of housing in California, governments at the federal, state, and local levels must focus on providing additional assistance to these communities rather than creating barriers to access to public benefits and social services support.

The many public benefit and social services programs administered by CHHS provide a much needed safety net for the State’s low-income communities, who are largely communities of color. California proudly welcomes immigrants, who are a vital part of our state’s history, our culture, our communities, and our economy. Some Californians, especially more recent arrivals who are establishing themselves in their new home and forging a path forward, benefit from health, nutrition, and cash support. SNAP benefits, for example, are crucial to ensuring that low-income children have access to an adequate diet, which in turn can lead to improved reading and math skills among school-aged children and higher graduation rates.⁷⁵ Today, almost half of the state’s households receiving SNAP benefits are Latino.⁷⁶ This assistance is critically important given that more than one in five Latino families with children (22 percent) have difficulty affording adequate food.⁷⁷ SNAP benefits allow low-income seniors, many of whom live on fixed incomes, to afford food while also being able to cover their housing, transportation, and health care costs.⁷⁸ This investment in our States’ people and future is an investment that is both compassionate and prudent, as it pays off in lower poverty and suffering in the short term and in California’s global prosperity in the longer run. If implemented, the Proposed Rule would cause large numbers of

⁷⁴ Billy Wynne & Dawn Joyce, *Immigrants and the New Proposed “Public Charge” Rule* (Oct. 2, 2018) CALIFORNIA HEALTH CARE FOUNDATION, <https://www.chcf.org/blog/immigrants-new-proposed-public-charge-rule/>.

⁷⁵ *SNAP Helps Millions of Children*, the Center on Budget and Policy Priorities, April 2017 available at <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-children>.

⁷⁶ *CalFresh Participation by Race/ethnicity*, Kids Data, available at <https://www.kidsdata.org>.

⁷⁷ *SNAP Helps Millions of Latinos*, the Center on Budget and Policy Priorities, February 2018, available at <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-latinos>.

⁷⁸ *SNAP Helps Millions of Seniors*, the Center on Budget and Policy Priorities, April 2017 available at <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-income-seniors>.

Californians to forgo using public benefits, resulting in increased poverty and homelessness, along with worsened health and educational outcomes. The effects of the Proposed Rule would disproportionately be felt by communities of color who use public benefits and social services to make ends meet and work towards self-sufficiency.

The Proposed Rule would roll back the progress California has made in reducing poverty and ensuring better outcomes for children and families. The State has invested significant resources in designing and administering an extensive safety net aimed at reducing poverty (TANF/CalWORKs), reducing homelessness (Section 8 Housing and other rental assistance), improving health care coverage and public health services (Medicaid/Medi-Cal), and reducing hunger (SNAP/CalFresh and WIC). Since 2012, more than \$20 billion in state general funds have been committed annually to poverty reduction programs serving the State's neediest populations.⁷⁹ In addition, California has made significant investments in education and outreach to increase enrollment of eligible populations in these programs. The Proposed Rule's chilling effect will lead to devastating levels of disenrollment, harm the populations served by our agencies, increase poverty across the State, and erode the safety net for California's most vulnerable populations. The effects of the Proposed Rule would directly contradict the stated purposes and goals of the major public benefits programs targeted in the Proposed Rule.

Existing federal laws, including PRWORA, already limit access to public benefits for certain groups of immigrants. And, as recognized by INS when it promulgated the current public charge policy, such laws can inadvertently influence the behaviors of immigrants beyond their reach.⁸⁰ Such laws can also "have the unintended effort of halting or hindering the integration of U.S. citizens and lawful permanent residents in mixed-status families."⁸¹ Laws often are designed to apply to individuals, but their effects ripple through households, families, and communities, with measurable long-term negative impacts on children who are lawful U.S. citizens."⁸² The Proposed Rule would further exacerbate these inequalities, all in contravention of Congressional intent that these public benefits be accessed by eligible immigrants.

C. The Proposed Rule Will Negatively Impact Communicable Disease Prevention Efforts in California, Leading to Increased Rates of Disease, Birth Defects, and Death for Both Immigrants and U.S. Citizens.

Were it adopted, the Proposed Rule's adverse impacts on public health will include increased rates of infection, disease, birth defects, and death in California and across the country. Such impacts would not be limited to individuals seeking adjustment of status who are subject to public charge determinations, but would affect all residents regardless of national origin or immigration status. This is for several reasons, including (1) the Proposed Rule's anticipated chilling effect, which

⁷⁹ California State Budget 2018-19, California Department of Finance, p.10, available at <http://www.ebudget.ca.gov/2018-19/pdf/Enacted/BudgetSummary/Introduction.pdf>.

⁸⁰ 64 Fed. Reg. at 28676 ("Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a 'public charge.'").

⁸¹ As DHS is aware, the term "mixed-status" refers to families or households in which members have different immigration statuses, e.g., a household with one immigrant parent who is subject to public charge, one immigrant parent who is a LPR, and two U.S. citizen children.

⁸² Panel on the Integration of Immigrants into American Society, *The Integration of Immigrants into American Society* (2015), THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, MEDICINE, Sum-7-8, http://facweb.northseattle.edu/bwilli/Diversity_Resources/CulturalCompetency/Immigrants%20Research.pdf.

will deter individuals, including individuals to which public charge does not apply, from seeking or receiving the preventative and therapeutic immunization the health care benefits for which they are eligible; and (2) the fact that certain conditions, including communicable diseases, do not discriminate on the basis of immigration status such that a threat to one is a threat to all.

Although DHS only references a potential chilling effect on one page of the 183-page Proposed Rule,⁸³ the Rule expressly anticipates that persons other than those individuals subject to public charge determinations will disenroll from or decline to enroll in public benefits programs for which they and their family members remain eligible under the law.⁸⁴ DHS contemplates that these drops in enrollment may affect U.S. citizens, including U.S. citizen children in mixed-status households.⁸⁵ This declining enrollment in public benefits programs, particularly those programs offering health care and immunizations services, is likely to increase the number of people—including both citizens and non-citizens who suffer from and transmit communicable diseases in California.

Although the Proposed Rule appears to incorporate statutory exceptions intended to protect public health, these exceptions are woefully inadequate. The Proposed Rule includes a key exception for medical assistance for an emergency medical condition⁸⁶, and the preamble to the Proposed Rule acknowledges Congress’s decision not to restrict eligibility for “public health assistance” related to immunizations and treatment of the symptoms of a communicable diseases.⁸⁷ However, an immigrant’s receipt of Medicaid benefits, which DHS acknowledges cover “routine check-ups, immunizations, doctor visits, and prescriptions,”⁸⁸ is a negative or heavily weighted negative factor under DHS’s proposed public charge framework. As a result, we anticipate that the chilling effect described above will result in individuals, including LPRs and U.S. citizens in mixed-status households, deferring or avoiding testing or treatment for dangerous communicable diseases regardless of the Proposed Rule’s exceptions.

1. The Proposed Rule Will Increase Disease Rates for All Californians.

If the Proposed Rule is adopted, U.S. citizens and non-citizens alike will face increased risks for transmission of communicable diseases, including, but not limited to, vaccine-preventable diseases.

Immunizations protect both individuals and communities. Community immunity, also known as herd immunity, is achieved only when a sufficient proportion of a population is immune to an infectious disease, making the disease’s spread from person to person unlikely.⁸⁹ Even individuals who cannot be vaccinated due to compromised immune systems, such as newborns and persons

⁸³ 83 Fed. Reg. at 51266.

⁸⁴ 83 Fed. Reg. at 51228 (“Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households.”); *see also id.* at 51260, 51277.

⁸⁵ *Id.*

⁸⁶ 83 Fed. Reg. at 51290.

⁸⁷ (*Id.* at p. 51131; see 8 U.S.C. § 1611(b)(1)(C).)

⁸⁸ (83 Fed.Reg. at p. 51174.)

⁸⁹ *Vaccine Benefits* (Mar. 6, 2014) NATIONAL INSTITUTES OF HEALTH, <https://www.niaid.nih.gov/research/vaccine-benefits>; *Glossary* (May 31, 2016), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vaccines/terms/glossary.html>.

with chronic illnesses, are offered some protection because the disease has little opportunity to spread within the community.⁹⁰

We note that despite DHS's acknowledgement of PRWORA's exception for public health benefits such as immunizations and treatment for communicable diseases in the Proposed Rule's *preamble*,⁹¹ the proposed *regulatory text* does not explicitly state that public benefits covering immunizations and treatment for communicable diseases will not be considered under the proposed public charge framework.⁹² Because it may not be readily discernible to the regulated public whether the receipt of immunization and treatment services for communicable diseases could affect a public charge determination, we request that DHS specifically state in any finalized regulation text that the definition of public charge does not apply to "[p]ublic health assistance (not including any assistance under [the Medicaid program] for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease."⁹³ Without such changes, the Proposed Rule is likely to cause unnecessary fear and confusion among immigrants subject to public charge and their LPR or U.S. citizen family members to whom the Rule does not apply. This could lead to lower vaccination rates and weakening of herd immunity, which California has taken intentional steps to protect,⁹⁴ putting both immigrants and U.S. citizens at greater risk for infection by vaccine-preventable diseases. Additionally, California law requires that children admitted to public or private school be immunized against a host of communicable diseases in order to prevent their spread.⁹⁵ The Proposed Rule's potential chilling effect on immunizations, particularly for school-aged children, will not only contravene California law and policy but will also erode the ability of children and their families to gain self-sufficiency through educational attainment.

According to research by both CDPH and the Centers for Disease Control and Prevention (CDC), rates of sexually transmitted diseases (STDs) in California and the nation are reaching alarming highs and continuing to rise.⁹⁶ Due to the anticipated chilling effect described above, we expect the Proposed Rule to adversely impact the State's STD control and prevention efforts as immigrants and their families, including U.S. citizen family members, decline to seek routine care, testing, and treatment for STDs and other communicable diseases due to fears that a loved one will be found inadmissible under the Proposed Rule's expansive definition of public charge. This reluctance to access available health care benefits will directly hinder the ability of state- and county-level communicable disease investigators to locate people with untreated infectious diseases and bring them into local public health clinics for appropriate treatment.

⁹⁰ *Glossary* (May 31, 2016) CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vaccines/terms/glossary.html>.

⁹¹ See 83 Fed. Reg. at 51131 (citing 8 U.S.C. § 1611(b)(1)(C)).

⁹² See 83 Fed. Reg. at 51289-96.

⁹³ 8 U.S.C. § 1611(b)(1)(C).

⁹⁴ Sen. Bill 277, 2015-2016 Leg. Sess. (Cal. 2015) ("[I]t is the intent of the Legislature to provide . . . [a] means for the eventual achievement of total immunization of appropriate age groups against the [listed] childhood diseases . . .").

⁹⁵ Cal. Health & Safety Code § 120335.

⁹⁶ *Sexually Transmitted Diseases in California: 2017 Snapshot* (Aug. 22, 2018) California Department of Public Health <<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/STDs-CA-2017Snapshot.pdf>> (as of Oct. 16, 2018); *Sexually Transmitted Disease Surveillance 2017* (Sept. 10, 2018) Centers for Disease Control and Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention <https://www.cdc.gov/std/stats17/2017-STD-Surveillance-Report_CDC-clearance-9.10.18.pdf> (as of Oct 29, 2018).

The Proposed Rule fails to identify or describe proposed efforts by DHS or federal benefit-granting agencies such as HHS to dispel unwarranted fears about the receipt of benefits, particularly by U.S. citizens and LPRs who have family members subject to public charge but themselves are not subject to the Rule.⁹⁷ We are respectfully requesting that DHS identify what efforts it or the federal-benefit granting agencies will make to ensure that U.S. citizens and LPRs in mixed-status households, as well as other immigrants not subject to public charge determinations such as refugees and asylees,⁹⁸ are *clearly* informed that the Proposed Rule does not affect their eligibility for public benefits, including Medicaid and immunization services.

2. The Proposed Rule Will Lead to Decreased Prenatal Care and Increased Preventable Maternal and Infant Illnesses and Deaths.

We also anticipate that the Proposed Rule will have a chilling effect on the willingness of pregnant women to access prenatal care, increasing the risk to mothers and infants of illness and death.

Pregnant women are more susceptible to developing severe influenza, and influenza during pregnancy can result in pre-term birth, low birth weight, and stillbirth of the infant.⁹⁹ Influenza immunization during pregnancy helps protect both mothers and infants from influenza and its complications, including illnesses which require hospital care.¹⁰⁰ Additionally, young infants are at the greatest risk of serious pertussis disease, also known as whooping cough, which can result in hospitalization or death.¹⁰¹ Immunizing pregnant women, which passes protection to their infants, is currently the most effective way to protect young infants from pertussis.¹⁰² Decreased prenatal care would result in fewer women becoming immunized against pertussis or influenza during pregnancy, leading to increased illness and deaths amongst infants and mothers.

Congenital syphilis, also known as syphilis in infants, is a highly preventable disease that infects infants born to mothers with untreated or insufficiently treated syphilis.¹⁰³ Congenital syphilis can cause miscarriages, prematurity, and low birth weights.¹⁰⁴ Without complete, timely treatment with antibiotics, up to 40 percent of infants exposed to syphilis during pregnancy may be stillborn or die shortly after birth.¹⁰⁵ Those infants who are born alive will be at high risk for serious

⁹⁷ Again, it is worth noting that LPRs are not considered applicants for admission and generally are not subject to public charge determinations. *See* 83 Fed. Reg. at 51127, n. 68 & 73, 51135, n. 176, 51223.

⁹⁸ *See* 83 Fed. Reg. at 51156, 51160.

⁹⁹ *ACIP Recommendations and Pregnancy (Flu)* (Dec. 6, 2017), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vaccines/pregnancy/hcp-toolkit/acip-recs.html>.

¹⁰⁰ *ACIP Recommendations and Pregnancy (Flu)* (Dec. 6, 2017), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vaccines/pregnancy/hcp-toolkit/acip-recs.html>.

¹⁰¹ Roger Baxter et al., *Effectiveness of Vaccination During Pregnancy to Prevent Infant Pertussis*, 139 *Pediatrics* 5 (May 2017), <http://pediatrics.aappublications.org/content/pediatrics/139/5/e20164091.full.pdf>.

¹⁰² Roger Baxter et al., *Effectiveness of Vaccination During Pregnancy to Prevent Infant Pertussis*, 139 *Pediatrics* 5 (May 2017).

¹⁰³ *Congenital Syphilis – CDC Fact Sheet* (Oct. 2016), CENTERS FOR DISEASE CONTROL AND PREVENTION, *SNAP Helps Millions of Seniors*, the Center on Budget and Policy Priorities, April 2017 available at <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-income-seniors>.

¹⁰⁴ *Congenital Syphilis – CDC Fact Sheet* (Oct. 2016), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/std/syphilis/cong-syph-feb-2017.pdf>.

¹⁰⁵ *Congenital Syphilis – CDC Fact Sheet* (Oct. 2016), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/std/syphilis/cong-syph-feb-2017.pdf>.

complications, including blindness, deafness, severe anemia, deformed bones, brain and nerve problems, meningitis, and death.¹⁰⁶

The Proposed Rule is expected to exacerbate the high rate of congenital syphilis cases already affecting California. CDPH data demonstrates there were 283 congenital cases reported in California in 2017.¹⁰⁷ Of those 283 cases, 30 were stillbirths. The Proposed Rule would likely lead to an even greater increase in stillbirths and other long-term, harmful effects from congenital syphilis as immigrants subject to public charge and their family members avoid accessing the public benefits for which they are eligible, including routine prenatal care that covers testing or treatment for syphilis.¹⁰⁸

3. The Proposed Rule Likely Lead to an Increase in Tuberculosis Cases.

Tuberculosis (TB) is a highly contagious disease that is spread through the air when a person with active TB disease coughs or sneezes.¹⁰⁹ According to the CDC, in 2017, there were 1.3 million TB-related deaths worldwide and approximately 9,100 cases in the United States.¹¹⁰ The CDC has indicated that “[e]nding TB requires maintaining and strengthening current TB control priorities while increasing efforts to identify and treat latent TB infection *among high-risk populations*”¹¹¹ and has prioritized “collaborating with other national and international public health organizations to improve screening of immigrants and refugees.”¹¹² Of the 2,056 new active TB cases reported in California in 2017, 82 percent of affected persons were born outside of the United States.¹¹³ As DHS is aware,¹¹⁴ even when enacting far-reaching welfare reform under PRWORA, Congress chose not to restrict immigrant eligibility for public health benefits such as immunizations and treatment for communicable diseases.¹¹⁵ The Proposed Rule and its anticipated chilling effect are likely to undermine these vital public health benefits as immigrants and their family members decline to seek necessary care due to fear and confusion about the Proposed Rule’s applicability.¹¹⁶

¹⁰⁶ *Congenital Syphilis – CDC Fact Sheet* (Oct. 2016), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/std/syphilis/cong-syph-feb-2017.pdf>.

¹⁰⁷ (*Syphilis in Women and Babies: 2017 Snapshot for California*. (Aug. 22, 2018) California Department of Public Health <<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Syphilis-Women-Babies-2017Snapshot.pdf>> (as of Oct. 16, 2018).)

¹⁰⁸ According to the CDC, “[a]ll pregnant women should be tested for syphilis at the first prenatal visit.” (*Congenital Syphilis – CDC Fact Sheet* (Oct. 2016) Centers for Disease Control and Prevention <<https://www.cdc.gov/std/syphilis/cong-syph-feb-2017.pdf>> (as of Oct. 16, 2018).)

¹⁰⁹ (*What to Do If You Have Been Exposed to TB* (updated Mar. 21, 2016) Centers for Disease Control and Prevention <<https://www.cdc.gov/tb/topic/basics/exposed.htm>> (as of Oct. 29, 2018).)

¹¹⁰ (*Data and Statistics* (updated Oct. 22, 2018) Centers for Disease Control and Prevention <<https://www.cdc.gov/tb/statistics/default.htm>> (as of Oct. 29, 2018).)

¹¹¹ (*Ibid.*)

¹¹² (*Factsheet* (updated Oct. 26, 2016) Centers for Disease Control and Prevention <https://www.cdc.gov/tb/publications/factsheets/specpop/tuberculosis_in_hispanics_latinos.htm> (as of Oct. 29, 2018).)

¹¹³ (*TB in California: 2017 Snapshot* (Feb. 13, 2018) California Department of Public Health <<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/TBCB-TB-Fact-Sheet-2017.pdf>> (as of Oct. 29, 2018).)

¹¹⁴ 83 Fed. Reg. at 51130-31.

¹¹⁵ 8 U.S.C. § 1611(b)(1)(C).

¹¹⁶ Studies conducted in California and Maryland have also indicated that generalized fear of immigration authorities, especially among immigrants with low English proficiency, commonly results in delays in testing and treatment for TB, which in turn can exacerbate the deleterious health effects associated with the disease. (Asch et al., *Why Do Symptomatic Patients Delay Obtaining Care for Tuberculosis?* (Apr. 1, 1998) *American Journal of Respiratory and Critical Care Medicine*, Vol. 157, No. 4; Golub et al., *Patient and health care system delays in*

An individual with undiagnosed and untreated TB, on average, may infect another ten to 15 individuals before their disease is so severe they are forced to seek care.¹¹⁷ Those at greatest risk for infection are family members, particularly children.¹¹⁸ Children infected with TB progress to active disease much more rapidly than adults and are at very high risk for severe, lifelong disability and death from tuberculosis.¹¹⁹ Barriers to early diagnosis and treatment of adults with TB and the children infected by them are likely to reverse the progress made in recent years in decreasing the number of pediatric tuberculosis cases and deaths in California.

D. The Proposed Rule Will Negatively Impact Public Health Programs that Promote Maternal, Child, and Family Health.

The Proposed Rule will also negatively impact programs that promote and protect maternal, child, and family health. This is true both as to programs that fall squarely within the Proposed Rule and as to programs that are excluded from it.

As an example of the former, although the proposed definition of public benefit generally covers Medicaid benefits, it purports to create an exception for “emergency labor and delivery.”¹²⁰ However, the Proposed Rule makes clear that DHS does not intend for the emergency medical condition exception to apply to non-emergent prenatal care or delivery assistance,¹²¹ both of which help assure healthy pregnancies and safe births. As a result, the Proposed Rule, if adopted, could lead to a host of preventable public health concerns, including pregnancy complications, maternal and fetal injuries, low birth weights, stillbirths, and deaths.

As an example of the latter, CDPH administers several programs that provide public benefits directed at promoting maternal, child, and family health that do not fall within the Rule’s proposed definition of public benefit, including numerous health education programs and California’s genetic disease screening program. Although the public benefits provided through these programs are not covered by the Proposed Rule, due to the likely chilling effect described above,¹²² immigrants and their families may refrain from seeking services for which they or their children are eligible. Fear of participating in programs such as the California Home Visiting Program, the Personal Responsibility Education Program, and programs funded by Title V block grants that are used to connect women, children, and youth to health care services will contribute to widening disparities in health outcomes between households with immigrant family members and households comprised exclusively of U.S. citizens. This is extremely troubling given the numbers

pulmonary tuberculosis in a low-incidence state (Sep. 2005) International Journal of Tuberculosis and Lung Disease, Vol. 9, No. 9.)

¹¹⁷ *What is Tuberculosis?*, KNC TUBERCULOSIS FOUNDATION, <https://www.kncvtbc.org/en/about-tb/what-is-tuberculosis/> (last visited Nov. 19, 2018).

¹¹⁸ *Questions and Answers About TB* (Dec. 18, 2014), CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/tb/publications/faqs/qa_introduction.htm#tbprobleminus.

¹¹⁹ Andrea T. Cruz & Jeffrey R. Starke, *Pediatric Tuberculosis*, 31 *Pediatrics in Review* 1 (Jan. 2010); *TB in Children* (June 21, 2018), CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/tb/topic/populations/tbinchildren/default.htm>.

¹²⁰ 83 Fed. Reg. at 51169, 51290; *see also* 8 U.S.C. § 1611(b); 8 U.S.C. § 1396b(v).

¹²¹ 83 Fed. Reg. at 51169.

¹²² *Supra* Part II.A.

of children in California and across the U.S. who are members of mixed-status families: one in two children in California has at least one immigrant parent.¹²³

E. The Proposed Rule Will Chill SNAP and WIC Enrollment, With Lifelong Impacts on Health, Learning, and Employment.

Nutrition programs such as SNAP and WIC are designed to meet the nutritional needs of families and improve health outcomes. Children are the majority of SNAP and WIC participants in California, with approximately 2 million children participating in SNAP and 800,000 children participating in WIC each month. Both SNAP and WIC allow families with children, especially young children, to combat food insecurity, and associated chronic diseases and mental illnesses, by providing access to nutritious meals.¹²⁴

SNAP is the largest children's nutrition and anti-poverty program in the country, and keeps millions of children out of poverty each year.¹²⁵ Most immediately, addressing food insecurity is posited to lessen the risk of developmental delays and improve outcomes such as children's ability to focus and perform at school.¹²⁶ By centering on the consumption of healthy foods, these programs are also designed to prevent obesity and other negative health outcomes associated with poor nutrition.¹²⁷

For children, SNAP drives nutritional health, growth, and learning in two key ways: in addition to the SNAP food benefit used to purchase groceries for meals at home, school-age children enrolled in SNAP are also automatically enrolled in free School Meals, without additional paperwork from their schools or families. The Proposed Rule and its resulting chilling effect may lead parents to withdraw their families from SNAP food and thereby disenroll their children from School Meals even though they remain eligible for these benefits. Parents should not be forced to choose between feeding their children and protecting their family's immigration status. Severe hunger for children in America was eliminated 40 years ago with the creation of SNAP. The Proposed Rule threatens to reverse this progress for the children of immigrants, including U.S. citizen children, which will have lifelong impacts on health, learning, and employment. The national goals of economic and social success for all children, including the children of recent immigrants, is undermined if parents disenroll from SNAP and free School Meals programs because of this Proposed Rule.

¹²³ Hans Johnson & Sergio Sanchez, *Just the Facts: Immigrants in California*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (May 2018), <https://www.ppic.org/publication/immigrants-in-california/>; United States Census Bureau, https://www.census.gov/newsroom/pdf/cspan_fb_slides.pdf (last visited Nov. 29, 2018).

¹²⁴ See Center on Budget and Policy Priorities. (last updated April 26, 2017). SNAP Helps Millions of Children. Retrieved from https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-children#_edn10 on October 31, 2018; *Planning a WIC Research Agenda: Workshop Summary* (2011), NATIONAL ACADEMY OF SCIENCES, https://www.ncbi.nlm.nih.gov/books/NBK209696/pdf/Bookshelf_NBK209696.pdf; Cindy W. Leung et al., *Household Food Insecurity is Positively Associated with Depression among Low-Income Supplemental Nutrition Assistance Program Participants and Income-Eligible Nonparticipants*, 145 J. Nutrition 622 (Mar. 2015); Hilary K. Seligman, *Food Insecurity is Associated with Chronic Disease among Low-Income NHANES Participants*, 140 J. Nutrition 304 (Feb. 2010).

¹²⁵ Center on Budget and Policy Priorities. (last updated April 26, 2017). SNAP Helps Millions of Children. Retrieved from https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-children#_edn10 on October 31, 2018.

¹²⁶ East, Chole N. (2016). *The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility*. Denver, CO: The University of Denver.

¹²⁷ *Our Kids, Our Future*. (2018). Washington, DC: First Focus and Child Poverty Action Group. Retrieved from

Similarly, even though WIC benefits are not enumerated under the proposed definition of public benefit,¹²⁸ the Rule is likely to have significant, adverse impacts on the health and nutrition of women, infants, and children in WIC families.¹²⁹ DHS itself acknowledges these potential consequences, noting that the decreased enrollment in public benefit programs anticipated under the Proposed Rule could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, and children.¹³⁰ Because DHS has requested comment on whether benefits other than those enumerated in the proposed definition of public benefit should be included in the final version of the rule, we discuss why WIC benefits should be explicitly exempted from the public charge framework *infra* Part IV.

III. The Proposed Rule Will Negatively Impact California’s Health Coverage Gains.

DHCS is the single state agency authorized to administer California’s Medicaid program, known as Medi-Cal. Approximately, 13.5 million Californians, one-third of California’s population, receive health care services financed or organized by DHCS, making the department the largest health care purchaser in California. DHCS oversees the expenditure of more than \$100 billion for the care of citizen and non-citizen low-income families, children, pregnant women, seniors, and persons with disabilities. Among the programs administered by DHCS, some of which are mandated by the federal government and others required by state law, are California Children’s Services; the Child Health and Disability Prevention program; the Genetically Handicapped Persons Program; the Newborn Hearing Screening Program; the Family Planning, Access, Care, and Treatment program; the Program of All-Inclusive Care for the Elderly, and Every Woman Counts. DHCS also administers programs for underserved Californians, including farm workers and Native American communities.

Like California’s overall population, Medi-Cal’s population is diverse. Approximately 17 percent of individuals enrolled in Medi-Cal are non-citizens. Among Medi-Cal’s non-citizen population there are a number of subgroups, and these subgroups are afforded varying degrees of health care coverage. For some non-citizen subgroups, only emergency and/or pregnancy-related and long-term care services are available. This coverage is referred to as “restricted scope” Medi-Cal. For others, all services under California’s Medicaid State Plan are available. This coverage is referred to as “full scope.”

In total, more than 2 million Medi-Cal beneficiaries have non-citizen status. While many lawfully present non-citizens are exempt from the Proposed Rule (e.g., refugees, asylees admitted to the United States and others), nearly half of non-citizen Medi-Cal beneficiaries are undocumented and could be subject to the Proposed Rule. In addition, many documented immigrants seeking legal admission, or an adjustment or extension of their status would also be subject to the Proposed Rule.

Because pregnancy related and full scope Medicaid services could be subject to a public charge designation, some non-citizens who receive pregnancy related or full-scope Medi-Cal services may avoid treatment altogether while others will likely resort to episodic and more costly emergency room treatment (which is paid by the federal government and not subject to the Proposed Rule). As a result, many individuals may risk suffering severe pain, injury or even death.

¹²⁸ 83 Fed. Reg. at 51289-90.

¹²⁹ Neeraj Kaushal & Robert Kaestner, *Welfare Reform and Health Insurance of Immigrants*, 40 Health Servs. Research 697 (June 2005).

¹³⁰ 83 Fed. Reg. at 51270.

Poor health, of course, also has a cascading effect on other social and economic factors, for example, impacts on an individual's ability to work or a child's ability to learn and attend school. Thus, while the anticipated health impacts alone are cause for grave concern, it is also anticipated that the health impacts of the Proposed Rule will have a detrimental impact on California's workforce and the education and long term development of California's children.

Similar to the impacts on beneficiaries of the Medi-Cal program, beneficiaries in other health programs operated by DHCS, may also be impacted by the Proposed Rule. These beneficiaries include recipients of breast and cervical cancer screening and treatment, genetically handicapped services, prostate cancer treatment and family planning services. These programs serve as a safety net for those who are otherwise not eligible for full-scope Medi-Cal, covering over 1.5 million individuals collectively. Many immigrants may avoid, not only all Medicaid services, but also these other DHCS programs, for fear of contact with any government sponsored health programs. If individuals avoid the preventive care and treatment provided by these programs, it will increase an individual's risk of late stage disease detection, unintended pregnancy, poor birth outcomes and increased morbidity and mortality for late stage disease.

In addition to the individual and larger public health impact, the Proposed Rule will result in significant new economic burdens for California's health care safety net. In recent years, the State has experienced a considerable decrease in the number of uninsured residents. This is predominantly attributable to the expansion of eligibility in the Medi-Cal program, which has reduced uncompensated care costs and allowed greater access to preventive care and earlier health interventions. If the number of uninsured in California were to increase and overall public health decline as a result of the Proposed Rule, California would incur a negative economic impact due to the accompanying increase in uncompensated care costs that would follow. These uncompensated care costs would then be shifted to the broader health care delivery system resulting in higher costs for public and private health care payers.

IV. WIC and CHIP Should Remain Excluded from the Public Charge Framework, and Additional Language Should Be Added to the Final Regulation Text to Clarify That All Unenumerated Benefits Will be Excluded from Any Public Charge Determination.

In response to DHS's specific request for comment as to whether benefits other than those enumerated in the Proposed Rule should be considered for public charge purposes,¹³¹ our answer is a resounding "no." More specifically, neither WIC, nor CHIP, nor any other currently unenumerated benefit, should be added to the list of benefits that could factor into the public charge analysis.

A. No Further Benefits Should Be Added to the Public Charge Determination.

WIC benefits should be excluded from any public charge considerations. For the reasons explained below and elsewhere in this comment, *see supra* Part II.E., including WIC benefits amongst those public benefits considered for public charge purposes would lead to increased pregnancy complications, worse health outcomes for mothers and children, and long-term, adverse health and social impacts for low-income children from infancy into adulthood. In addition, inclusion would contradict Congressional intent to ensure immigrant access to the WIC program.

¹³¹ 83 Fed. Reg. at 51174.

California’s WIC Program has a significant impact on young children that can last a lifetime. WIC benefits are a time-limited and focused investment in the health of mothers, infants, and children that ensures healthy babies and long-term, positive child development. In administering the WIC Program, CDPH works with 83 local WIC agencies (with more than 500 sites) and over 4,000 authorized vendors to serve more than 1 million participants each month.¹³² In addition to providing supplemental foods to participants, WIC, like other CDPH programs targeted to serve women, children, and their families, provides a number of essential educational services. These educational services include preventive and developmental screenings, online and on-site group health education, lactation assessment and counseling, and access to breast pumps.¹³³ The WIC Program promotes healthy births by ensuring adequate nutrition and healthy development in pregnancy and the first few years of life.¹³⁴

Including WIC on the Proposed Rule’s list of enumerated benefits would contravene congressional intent to ensure that immigrants and their families can access WIC benefits. In enacting PRWORA, Congress explicitly exempted the WIC Program from the law’s broad restrictions on immigrant participation in public benefit programs.¹³⁵ In doing so, Congress explained that “certain public health, nutrition, and in-kind community service programs should be exempted from the general prohibition on ineligible aliens accessing public benefits.”¹³⁶ This statement, PRWORA’s exemption for WIC benefits, and the current public charge policy’s recognition of the importance of supplemental public health and nutrition programs,¹³⁷ reflect a common understanding among Congress and federal policy makers that the positive health impacts of WIC and other public health programs justify their protection and uninterrupted administration.

DHS has also requested comment regarding whether CHIP should be included as an enumerated benefit under the final rule’s definition of public benefit.¹³⁸ We urge DHS to not include CHIP in any final rule based on the resulting negative health impacts that would be experienced by the affected children and increase costs for uncompensated care costs borne by the State.

It is important to recognize the federal government has given the states multiple options for how to structure the administration of the CHIP program. Specifically, pursuant to 42 U.S.C. 1397aa(a), states may: (1) claim title XXI funds under a Medicaid expansion model and extend coverage to eligible children under title XIX; (2) implement a standalone model to extend title XXI-compliant coverage to eligible children; or (3) use a combination of the two options. As currently proposed, it appears the Medicaid expansion model would qualify as a public benefit subjecting CHIP

¹³² CDPH/WIC Division (Oct. 8, 2018), CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, <https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/AboutWIC/CDPHWICDivision.aspx>.

¹³³ The WIC Program promotes and facilitates breastfeeding by providing educational materials, one-on-one consultations with peer and professional staff, group classes and support groups, and 24/7 hotlines for questions. WIC’s highly successful breastfeeding peer counselor program has helped improve the breastfeeding rates of WIC moms nationally from approximately 42 percent in 1998 to 71 percent in 2016 and has contributed to a reduction in breastfeeding disparities. *WIC Participant and Program Characteristics 2016 Final Report* (Apr. 2018), U.S. DEPARTMENT OF AGRICULTURE, <https://fns-prod.azureedge.net/sites/default/files/ops/WICPC2016.pdf>.

¹³⁴ Kathryn R. Fingar et al., *Reassessing the Association between WIC and Birth Outcomes Using a Fetuses-at-Risk Approach*, 21 *Maternal Child Health J.* 825 (Apr. 2017).

¹³⁵ Pub. L. No. 104-193, § 403, 110 Stat. 2105 (creating exception that allows qualified aliens to accept benefits under the Child Nutrition Act of 1966, the law authorizing WIC); *see also* 8 U.S.C. § 1613(c)(2)(D).)

¹³⁶ H.R. Rep. No. 104-828, 1st Sess., at 144 (1996).

¹³⁷ *See* 64 Fed. Reg. at 28676, 28677, 28692.

¹³⁸ 83 Fed. Reg. at 51174.

recipients to public charge scrutiny, whereas coverage through a standalone title XXI program would not. Due to the importance of the CHIP program to the overall health of children, CHIP should remain excluded from public charge scrutiny under the final rule. Assuming CHIP benefits remain excluded from the public charge framework, we request a modification to the regulation text that clarifies that all children eligible for CHIP shall remain excluded from public charge scrutiny without regard to the coverage model employed by the state in which the child lives.

Congress chose to allow the States to exclude¹³⁹ certain immigrant groups from PRWORA's restrictions on immigrant eligibility for public benefit programs, including Medicaid, CHIP, WIC, and SNAP, in recognition of the fact that such programs provide essential health care and nutrition services to immigrants and their families, including U.S. citizen children, promote public health, and protect the general welfare. The Proposed Rule, however, sows confusion about immigrants' ability to access these essential benefits and discourages immigrants and their families from receiving the health care, nutritional, and housing benefits for which they remain eligible by statute. This contravenes Congressional intent. For the reasons outlined in this letter, we urge DHS to withdraw the Proposed Rule.

Thank you for consideration of these points.

Sincerely,

/Michael Wilkening/

Michael Wilkening
Secretary
Health and Human Services Agency

/Jennifer Kent/

Jennifer Kent
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¹³⁹ 83 Fed. Reg. at 51131 (citing 8 U.S.C. § 1621(d)).