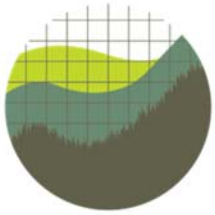

Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

December 10, 2018

VIA ELECTRONIC SUBMISSION

Department of Homeland Security

Attn: Office of Policy and Strategy, U.S. Citizenship and Immigration Services

Re: Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018)

Docket ID: USCIS-2010-0012

The Institute for Policy Integrity ("Policy Integrity") at New York University School of Law[1] respectfully submits the following comments to the Department of Homeland Security ("DHS") regarding a proposed rule that would expand DHS's ability to render aliens inadmissible to the United States based on a finding that they are likely to become "public charges" ("Proposed Rule").[2] Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

Our comments focus on inadequacies in the cost-benefit analysis accompanying the Proposed Rule. Specifically, we note that DHS fails to:

- identify any significant social benefits that would result from the Proposed Rule;
- develop a plausible estimate of the number of people who would disenroll from or forgo enrollment in public benefits programs as a result of the Proposed Rule;
- monetize the negative economic consequences of reduced participation in public benefits programs;
- account for the costs to the U.S. economy of deeming a greater number of foreign-born noncitizens inadmissible to the country;
- account for the costs of adverse public charge determinations for foreign-born noncitizens, their families, and surrounding communities; and
- provide any evidence to support its low estimate of the Proposed Rule's familiarization costs.

[1] This document does not purport to present New York University School of Law's views, if any.
[2] Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018).

Background

Section 212(a)(4)(A) of the Immigration and Nationality Act states: "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible."[3] Under the Immigration and Naturalization Service's 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds ("1999 Field Guidance"), the term "public charge" has been interpreted to refer only to an alien who is "primarily dependent" on the government for (1) the receipt of cash benefits for income maintenance, including Supplemental Security Income and Temporary Assistance for Needy Families; or (2) the receipt of benefits for long-term institutionalization.[4] The 1999 Field Guidance also states that, when determining whether an alien is "likely at any time to become a public charge," the agency should consider age, health, family status, assets, resources, financial status, education, and skills.[5]

The Proposed Rule would adopt a far broader definition of "public charge" than the 1999 Field Guidance, interpreting it to mean an alien who receives specific cash aid and non-cash medical care, housing, and food benefit programs where:

- for monetizable benefits, the cumulative value exceeds 15 percent of the Federal Poverty Guidelines ("FPG") for a household of one within a period of 12 consecutive months based on the per-month FPG for the months during which the benefits are received;[6]
- for non-monetizable benefits, the benefits are received for more than 12 months in the aggregate within a 36-month period;[7] or
- for combinations of monetizable benefits below the 15 percent threshold with non-monetizable benefits, the benefits are received for more than 9 months within a 36-month period.[8]

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[3] 8 U.S.C. § 1182(a) (2012).
[4] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999) [hereinafter 1999 Field Guidance]. The term "benefits for long-term institutionalization" refers to institutional services covered by Medicaid, including hospital services, Intermediate Care Facilities for People with Intellectual Disability, and Nursing Facility Services. *See Institutional Long Term Care*, MEDICAID, https://www.medicaid.gov/medicaid/ltss/institutional/index.html (last visited Nov. 30, 2018).
[5] 1999 Field Guidance, *supra* note 4, at 28,689.
[6] Monetizable benefits are benefits for which DHS can determine a cash value. *See* 83 Fed. Reg. at 51,158. For a household of one, the 15% of FPG threshold would be $1,821 in monetizable benefits, if received from January 2018 to December 2018. *Id.* at 51,164.
[7] *Id.* at 51,165.
[8] *Id.* at 51,166.

The specific benefits covered under the Proposed Rule include:

- monetizable benefits:
  - any Federal, State, local, or tribal cash assistance for income maintenance, including Supplemental Security Income, Temporary Assistance for Needy Families, and Federal, State or local cash benefit programs for income maintenance;
  - Supplemental Nutrition Assistance Program;
  - Section 8 Housing Choice Voucher Program and Project-Based Rental Assistance (including Moderate Rehabilitation);
- non-monetizable benefits:
  - Medicaid benefits, except for: emergency medical conditions; benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act; school-based benefits to children at or below the age threshold for secondary education; and benefits provided to foreign-born children of U.S. citizen parents;
  - benefits provided for institutionalization for long-term care at government expense;
  - premium and cost sharing subsidies for Medicare Part D;
  - subsidized housing under the Housing Act of 1937. [9]

The Proposed Rule uses a totality of circumstances test to determine whether an alien is "likely at any time to become a public charge."[10] Factors that weigh against the alien in the totality of circumstances test include: being under 18 or over 61 years of age;[11] having health conditions that interfere with the ability to attend school or work;[12] having a gross household income below 125 percent of the FPG based on the household size[13] ($15,175 per year for a household of one);[14] previously or currently receiving public benefits;[15] receiving an immigration fee waiver;[16] having a large household to support;[17] having a low

[9] *Id.* at 51,159.
[10] *Id.* at 51,174.
[11] *Id.* at 51,180.
[12] *Id.* at 51,182.
[13] *Id.* at 51,187.
[14] *See U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs,* U.S. DEP'T HEALTH & HUM. SERVICES, https://aspe.hhs.gov/poverty-guidelines (last visited Nov. 30, 2018).
[15] 83 Fed. Reg. at 51,187. DHS would not consider public benefits excluded by the 1999 Field Guidance if they were received before the effective date of the Proposed Rule. *Id*. at 51,207.
[16] *Id.* at 51,187.
[17] *Id.* at 51,184.

level of education[18] or English proficiency;[19] and lacking a sufficient affidavit of support.[20] The only factor that weighs heavily in favor of the alien is the presence of financial assets, resources, support, or annual income of at least 250 percent of the FPG ($30,350 per year for a household of one[21]).[22]

The Proposed Rule would not apply to aliens "who are seeking nonimmigrant or immigrant visas at consular posts worldwide,"[23] as such aliens are subject to the State Department's public charge policies.[24]

Comments on Cost-Benefit Analysis for the Proposed Rule

Executive Order 12,866 requires agencies to assess the costs and benefits of any economically significant regulatory action, including, but not limited to, the action's expected effects on "the efficient functioning of the economy and private markets," "health," and "safety."[25] This assessment must be based "on the best reasonably obtainable scientific, technical, economic, and other information," and effects should be quantified "to the extent feasible."[26] Long-standing guidance on regulatory analysis from the Office of Management and Budget similarly advises that "[s]ound quantitative estimates of benefits and costs, where feasible, are preferable to qualitative descriptions."[27] Because some effects are "too difficult to quantify or monetize given current data and methods," however, agencies must also "carry out a careful evaluation of non-quantified benefits and costs."[28]

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[18] *Id.* at 51,189.
[19] *Id.* at 51,196.
[20] *Id.* at 51,198.
[21] *See U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, *supra* note 14.
[22] 83 Fed. Reg. at 51,204.
[23] *Id*. at 51,134.
[24] *Frequently Asked Questions: Proposed Changes to the Public Charge Rule*, NAT'L IMMIGR. L. CTR., https://www.nilc.org/issues/economic-support/pubcharge/proposed-changes-to-public-charge-rule-faq/ (last visited Nov. 30, 2018); *see also* SHAWN FREMSTAD, CTR. FOR AM. PROGRESS, TRUMP'S 'PUBLIC CHARGE' RULE WOULD RADICALLY CHANGE LEGAL IMMIGRATION 3 (2018), https://cdn.americanprogress.org/content/uploads/2018/11/27080618/Trump-LPC-Misconceptions2.pdf (laying out which agency would apply a public charge test to different categories of individuals).
[25] Exec. Order No. 12,866 § 6(a)(3)(C), 58 Fed. Reg. 51,735 (Oct. 4, 1993). DHS has concluded that the Proposed Rule is a significant regulatory action for the purposes of Executive Order 12,866. 83 Fed. Reg. at 51,227.
[26] Exec. Order No. 12,866 §§ 1(b)(7), 6(a)(3)(C).
[27] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR A-4, REGULATORY ANALYSIS 26 (2003) [hereinafter CIRCULAR A-4].
[28] *Id.* at 26-27.

The cost-benefit analysis prepared by DHS to accompany the Proposed Rule is deficient in at least six respects. First, DHS fails to distinguish between benefits and transfers, rendering its examination of the benefits of the Proposed Rule inadequate for the purpose of determining if the Proposed Rule is cost-benefit justified. Second, DHS does not provide a plausible estimate of the number of people who will disenroll from or forgo enrollment in public benefits programs as a result of the Proposed Rule. Third, DHS fails to monetize the costs of this disenrollment and forgone enrollment, such as reduced health and productivity. Fourth, DHS fails to account for the costs to the U.S. economy of deeming a greater number of foreign-born noncitizens inadmissible to the country. Fifth, DHS fails to account for the non-financial costs of adverse public charge determinations for affected foreign-born noncitizens, as well as their families and surrounding communities. Finally, DHS fails to provide any evidence for its low estimate of the Proposed Rule's familiarization costs.

Separate from the requirements of Executive Order 12,866, courts have held that "when an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable."[29] Here, DHS has "inconsistently and opportunistically framed" the economic impacts of the Proposed Rule.[30] Finalizing the Proposed Rule in reliance on this flawed cost-benefit analysis would be arbitrary and capricious.

I. DHS Does Not Identify Any Significant Social Benefits that Will Result from the Proposed Rule

DHS considers the "primary benefit of the Proposed Rule [to] be . . . better ensur[ing] that aliens who are admitted to the United States or apply for adjustment of status would not receive one or more public benefits . . . and instead, will rely on their financial resource [sic], and those of family members, sponsors, and private organizations."[31] Characterizing this as a benefit ignores long-standing principles of regulatory cost-benefit analysis, which distinguish between benefits and transfers.[32]

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[29] *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (arbitrary and capricious standard requires agency to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made" (internal quotation marks omitted)).

[30] *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).

[31] 83 Fed. Reg. at 51,274.

[32] *See, e.g.*, CIRCULAR A-4, *supra* note 27, at 38 ("Benefit and cost estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.").

With the above statement, DHS essentially claims that the chief benefit of the Proposed Rule is reducing public benefits payments from the federal and state governments to a group of individuals.[33] But the purpose of a regulatory cost-benefit analysis is to determine whether a policy will increase welfare for society *as a whole.*[34] And from a societal perspective, any savings for federal and state programs that *provide* fewer public benefits under the Proposed Rule will be entirely offset by losses to individuals who *receive* fewer benefits. In other words, decreasing the provision of public benefits is neither a benefit nor a cost of the Proposed Rule. Instead, it is a distributional effect—a reduction in transfers from the federal and state governments to certain individuals.[35]

While transfer payments (and reductions thereof) are not themselves properly viewed as regulatory costs or benefits, they can nevertheless generate costs or benefits by incentivizing behavioral changes that consequently impact the availability and use of real resources.[36] What DHS must address in its cost-benefit analysis, then, is whether projected reductions in benefit payments will have positive consequences for the larger economy and whether those positive consequences outweigh any accompanying negative effects, including but not limited to the Proposed Rule's direct compliance costs.[37] Without

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[33] DHS estimates that the Proposed Rule would reduce total annual transfer payments by $2.27 billion. 83 Fed. Reg. at 51,228, 51,232 tbl.36. Outside experts have cast doubt on the methodology used to generate this estimate. *See, e.g.*, SAMANTHA ARTIGA ET AL., HENRY J. KAISER FAM. FOUND., ESTIMATED IMPACTS OF THE PROPOSED PUBLIC CHARGE RULE ON IMMIGRANTS AND MEDICAID 11 (2018), http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid ("[D]HS assumes that all individuals directly affected by the public charge rule (i.e., those applying to adjust status) drop coverage but no disenrollment effects among their family members or among other noncitizen families. However, DHS recognizes that, 'when eligibility rules change for public benefits programs there is evidence of a chilling effect that discourages immigrants from using public benefits programs for which they are still eligible.'").

[34] *See* Exec. Order No. 12,866 § 1(b)(11) ("Each agency shall tailor its regulations to impose the least burden on society . . . .").

[35] *See* CIRCULAR A-4, *supra* note 27, at 38.

[36] *Cf., e.g.*, Daniel Hemel et al., *Cost-Benefit Analysis of Tax Regulations: A Case Study*, MEDIUM: WHATEVER SOURCE DERIVED (July 27, 2018), https://medium.com/whatever-source-derived/cost-benefit-analysis-of-tax-regulations-a-case-study-with-jennifer-nou-and-david-weisbach-f74ea211a5ef.

[37] Though transfers from the United States to other countries may be categorized as regulatory costs according to OMB guidance, CIRCULAR A-4, *supra* note 27, at 38, DHS's analysis of reduced benefit payments pertains only to current residents of the United States, *see* 83 Fed. Reg. at 51,260. Thus, the reductions are properly considered transfers, not costs. CIRCULAR A-4, *supra* note 27, at 15 (directing agencies to "focus on benefits and costs that accrue to citizens and *residents* of the United States" (emphasis added)).

completing such an analysis, DHS cannot reasonably conclude that the Proposed Rule has *any* significant benefits,[38] much less that those benefits justify the rule's costs.

II. DHS Does Not Plausibly Estimate the Extent to Which the Proposed Rule Will Reduce Participation in Public Benefits Programs

As discussed above, DHS acknowledges that that Proposed Rule will cause some foreign-born noncitizens to disenroll from or forgo enrollment in public benefits programs. DHS does not. However, provide a plausible estimate of the number of foreign-born noncitizens who will cease participation in such programs or the amount of time for which they will do so. DHS also ignores the possibility that the Proposed Rule will lead people who are *not* legally subject to an inadmissibility determination on public charge grounds to cease participation in public benefits programs due to fear or misinformation about the Proposed Rule's scope.

A. DHS Relies on Unreasonable Assumptions in Estimating the Number of Applicants for Adjustment of Status Who Will Cease Participation in Public Benefits Programs and the Period of Time for Which They Will Do So

DHS assumes that 2.5 percent of the foreign-born noncitizen population that uses public benefits will disenroll from or forgo enrollment in benefits programs each year as a result of the Proposed Rule. To support this estimate, the agency points to U.S. Census Bureau data showing that an average of 2.5 percent of *all* foreign-born noncitizens apply for adjustment of status each year.[39] But DHS cites no data on the percentage of foreign-born noncitizens *participating in public benefits programs* who apply for an adjustment of status each year. In other words, the agency simply assumes, without evidence or explanation, that the population of foreign-born noncitizens using public benefits programs mirrors the composition of the foreign-born noncitizen population as a whole.

In addition to lacking a reasonable basis for its estimate of the number of foreign-born noncitizen recipients of benefits who apply for an adjustment of status each year, DHS relies on an unreasonable assumption regarding the length of time for which those applicants will abstain from public benefits programs due to the Proposed Rule. Specifically, DHS assumes that foreign-born noncitizens will cease participation in benefits

[38] The only other benefits cited by DHS are: (1) a reduction in paperwork costs due to elimination of Form I-864W; and (2) the creation of an opportunity to secure an adjustment of status notwithstanding a public charge determination by filing a public charge bond. 83 Fed. Reg. at 51,118. This latter effect is more properly viewed as a potential mitigation of the Proposed Rule's costs than as an independent benefit.

[39] 83 Fed. Reg. at 51,266.

programs *only* in the 12-month period prior to applying for an adjustment of status.[40] But the Proposed Rule provides that "an alien's past receipt of public benefits within the *36 months* immediately preceding his or her application . . . carries significant weight in determining whether the alien is likely to become a public charge."[41] It thus makes little sense to assume that foreign-born noncitizens hoping "to preserve their chances of adjusting status" will disenroll from or forgo enrollment in public benefits programs for only one—rather than three—years prior to filing an application.[42]

A lack of certainty regarding the Proposed Rule's effects does not leave DHS free to base its analysis on unreasonable assumptions. Nor does DHS's inclusion of a sensitivity analysis in which it recognizes the possibility of longer periods of disenrollment/forgone enrollment compensate for the irrationality of its primary 12-month assumption.[43]

As OMB guidance on regulatory analysis explains, cost-benefit analysis should be "realistic,"[44] and agencies should deal with (inevitable) uncertainties by "assessing . . . the way in which benefit and cost estimates may be affected under *plausible* assumptions."[45] In other words, *all*—not just some—of the assumptions made in the agency's analysis must be plausible.[46] Because it is implausible to assume that the Proposed Rule will lead foreign-born noncitizens to discontinue participation in benefits programs for only 12 months prior to applying for an adjustment of status, DHS cannot properly include such an assumption in its cost-benefit analysis, especially as part of its primary analysis.

B. DHS Does Not Consider the Proposed Rule's Potential to Cause Disenrollment Even Among Those Who Will Not Be Applying for an Adjustment of Status

Though DHS concedes that the Proposed Rule will cause a "chilling effect,"[47] it uses the term to describe only the disenrollment from benefits programs by individuals seeking an adjustment of status. DHS overlooks the chilling effect on those individuals who, though not legally subject to an inadmissibility determination on public charge grounds, may still end up disenrolling from, or forgo enrolling in, public benefits programs due to fear or misinformation about the details of the Proposed Rule.

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[40] *Id.*
[41] *Id*. at 51,199 (emphasis added).
[42] *Id.* at 51,266.
[43] *Id.* at 51,269.
[44] CIRCULAR A-4, *supra* note 27, at 39.
[45] *Id.* at 38.
[46] *See also id.* at 42 ("If benefit or cost estimates depend heavily on certain assumptions, [agencies] should make those assumptions explicit and carry out sensitivity analyses using plausible alternative assumptions.").
[47] 83 Fed. Reg. at 51,266.

Noncitizen parents of U.S.-born children, for example, might fear—incorrectly—that their children's participation in the Supplemental Nutrition Assistance Program ("SNAP") may serve as grounds for their own inadmissibility.[48] The Migration Policy Institute estimated the potential chilling effects of a preliminary version of the Proposed Rule using studies on immigrant participation in public benefits programs after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It found that 20 to 60 percent of the 27 million immigrants in the United States who live in a family receiving public benefits could withdraw from public benefits programs as a result of the Proposed Rule.[49] DHS should similarly estimate the Proposed Rule's effects on program participation not just by those who anticipate applying for an adjustment of status, but also by those applicants' family members.[50]

III. DHS Should Monetize the Costs of Reduced Participation in Public Benefits Programs

Executive Order 12,866 explains that an assessment of a rule's costs should include "any adverse effects on . . . health, safety, and the environment" that the rule may cause.[51] DHS briefly lists the costs to foreign-born noncitizens of disenrolling from or forgoing enrollment in the public benefits programs covered by the Proposed Rule. These costs include: detrimental effects on health, increased use of the emergency room, heightened rates of disease, increased incidence of uncompensated care, higher poverty and housing instability, lower productivity, and lower educational attainment.[52] Beyond cursory enumeration, however, DHS makes no attempt to either quantify or qualitatively discuss these substantial harms.

DHS should monetize the costs of reduced use of public benefits programs by looking to data compiled by the agencies that administer these programs, such as the Department of Housing and Urban Development ("HUD"), Health and Human Services, and Education. For example, HUD conducted a study that quantifies the impacts of Welfare to Work housing vouchers on economic well-being, both at the individual family and neighborhood level. HUD uses metrics such as mobility, homelessness, poverty rate, welfare concentration, employment rate, level of education, juvenile delinquency, earnings, household

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[48] JEANNE BATALOVA ET AL., MIGRATION POLICY INST., CHILLING EFFECTS: THE EXPECTED PUBLIC CHARGE RULE AND ITS IMPACT ON LEGAL IMMIGRANT FAMILIES' PUBLIC BENEFITS USE 6 (2018), https://www.migrationpolicy.org/sites/default/files/publications/ProposedPublicChargeRule_FinalWEB.pdf.

[49] *Id.* at 23.

[50] *See infra* Part III.

[51] Exec. Order No. 12,866 § 6(a)(3)(C)(ii).

[52] 83 Fed. Reg. at 51,270.

composition, and housing quality.[53] Between 1999 and 2004, housing vouchers reduced the percentage of homeless families living in the streets or in shelters from 7 percent to 5 percent, and the percentage of homeless families living with friends or relatives from 18 percent to 12 percent.[54]

DHS should also draw on the research of academics, nonprofits, and think tanks on the impacts of public benefits programs.[55] For example, the Food Research & Action Center quantifies numerous effects of the SNAP program on low-income households, including reduced poverty levels, reduced food insecurity, lower obesity rates, and improved physical and mental health outcomes.[56] Households receiving SNAP and housing benefits were 72 percent more likely to be housing secure than households receiving housing benefits alone. Participation in SNAP for six months also reduced the percentage of SNAP households that were food insecure by 6 to 17 percent.[57] DHS cannot claim to base its decisions on "the best reasonably obtainable scientific, technical, economic, and other information" if its cost-benefit analysis ignores established methodologies used to quantify the impacts of the public benefits programs covered by the Proposed Rule.[58]

IV. DHS Should Estimate the Costs to the U.S. Economy of Deeming a Greater Number of Foreign-born Noncitizens Inadmissible to the Country

DHS does not estimate the extent to which the Proposed Rule will increase the number of foreign-born noncitizens who are deemed inadmissible to the United States based on a

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[53] U.S. DEP'T. OF HOUS. & URBAN DEV., EFFECTS OF HOUSING VOUCHERS ON WELFARE FAMILIES 53, 118 (2006), https://www.huduser.gov/publications/pdf/hsgvouchers_1_2011.pdf.
[54] *Id.* at 139.
[55] *See, e.g.*, Kristin F. Butcher, *Assessing the Long-Run Benefits of Transfers to Low-Income Families* (Hutchins Ctr. on Fiscal & Monetary Policy at Brookings, Working Paper No. 26, 2017), https://www.brookings.edu/wp-content/uploads/2017/01/wp26_butcher_transfers_final.pdf; LARISA ANTONISSE ET AL., HENRY J. KAISER FAM. FOUND., THE EFFECTS OF MEDICAID EXPANSION UNDER THE ACA: UPDATED FINDINGS FROM A LITERATURE REVIEW (2018), http://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review; WILL FISCHER, CTR. ON BUDGET & POLICY PRIORITIES, RESEARCH SHOWS HOUSING VOUCHERS REDUCE HARDSHIP AND PROVIDE PLATFORM FOR LONG-TERM GAINS AMONG CHILDREN (2015), https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf; KATHLEEN ROMIG, CTR. ON BUDGET & POLICY PRIORITIES, SSI: A LIFELINE FOR CHILDREN WITH DISABILITIES (2017), https://www.cbpp.org/sites/default/files/atoms/files/5-11-17ss.pdf.
[56] FOOD RESEARCH & ACTION CTR., THE ROLE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM IN IMPROVING HEALTH AND WELL-BEING 9 (2017), http://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf.
[57] *Id.* at 5.
[58] Exec. Order No. 12,866 §1(b)(7).

public charge determination. Nor does it acknowledge, much less quantify, the costs that the departure of these noncitizens could impose on the U.S. economy.

Analysis by outside groups suggests that the Proposed Rule could lead to a massive increase in inadmissibility determinations. For example, under a preliminary version of the Proposed Rule, the Migration Policy Institute estimated that the share of noncitizens who could face a public charge determination based on benefits use would increase from 3 percent to 47 percent (equivalent to 10.3 million people).[59] As a further example, an analysis of customers of an immigration services firm found that "more than half . . . of foreign-born spouses who are currently eligible for green cards could suddenly find themselves ineligible if the DHS public charge rule is enacted."[60] Like these outside groups, DHS should estimate how many more foreign-born noncitizens residing in the United States would be rendered inadmissible under the Proposed Rule as compared to the 1999 Field Guidance.

Once it has developed an independent estimate of the extent to which the Proposed Rule will increase inadmissibility determinations, DHS should then estimate the economic impacts of that increase. A significant decrease in legal immigration could carry substantial costs for the U.S. economy. Indeed, New American Economy estimates that the Proposed Rule would generate negative indirect economic effects of more than $68 billion to the U.S. economy by rendering millions of workers inadmissible to the United States.[61] More generally, the National Academy of Sciences ("NAS") found that the presence of immigrant workers (authorized and unauthorized) in the labor market created an 11 percent increase in the U.S. GDP in 2012, an equivalent of $1.6 trillion.[62] When extrapolating to 2016, the NAS found that immigrant workers' contribution to GDP was about $2 trillion.[63] DHS should review this and similar literature when estimating whether and to what extent the Proposed Rule will, by increasing the number of inadmissibility determinations, impose costs on the U.S. economy.

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[59] BATALOVA ET AL., *supra* note 48, at 3.

[60] *Looming Immigration Directive Could Separate Nearly 200,000 Married Couples Each Year*, BOUNDLESS IMMIGRATION (Sept. 24, 2018), https://www.boundless.com/blog/looming-immigration-directive-separate-nearly-200000-married-couples.

[61] NEW AM. ECON., ECONOMIC IMPACT OF PROPOSED RULE CHANGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS (2018), https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds.

[62] NAT'L ACADS. OF SCI., ENG'G, & MED., THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION 282 (2017).

[63] *Id.*

V. DHS Should Consider the Costs to Foreign-Born Noncitizens of Being Forced to Leave the United States After an Adverse Public Charge Determination, as well as the Costs to Their Families and Surrounding Communities

Foreign-born noncitizens who are living in the United States and are found inadmissible due to an adverse public charge determination may have to leave the country.[64] There is a substantial body of empirical psychological literature that has investigated the non-financial effects of deportation and forced separation on immigrants, their families, and surrounding communities, which DHS does not address at all in its cost-benefit analysis for the Proposed Rule.

Many deported individuals experience a credible fear of persecution in their home countries,[65] emotional trauma from deportation, and severed relations with their families.[66] Children of deported family members experience economic hardship, housing instability, and food insecurity,[67] as well as emotional and behavioral challenges.[68] Other immigrants also report experiencing anxiety, psychological stress, trauma, and depression due to deportations and threats of deportations in their community,[69] and become more mistrustful of public institutions, including law enforcement and social services designed to improve public health.[70] DHS cannot reasonably finalize the Proposed Rule without

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[64] *See Looming Immigration Directive Could Separate Nearly 200,000 Married Couples Each Year*, *supra* note 60.

[65] Soc'y for Cmty. Research & Action: Div. 27 of the Am. Psychological Ass'n, *Statement on the Effects of Deportation and Forced Separation on Immigrants, their Families, and Communities*, 62 AM. J. COMMUNITY PSYCHOL., Sept. 2018, at 3, 5 (citing U.S. CITIZENSHIP & IMMIGRATION SERVS., CREDIBLE FEAR WORKLOAD REPORT (2016), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_CredibleFearReasonableFearStatisticsNationalityReport.pdf).

[66] *Id.* at 4 (citing Luis H. Zayas & Laurie Cook Heffron, *Disrupting Young Lives: How Detention and Deportation Affect US-Born Children of Immigrants*, CYF NEWS (Am. Psychological Ass'n, Washington, D.C.), Nov. 2016, http://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx).

[67] *Id.* (citing RANDY CAPPS ET AL., MIGRATION POLICY INST. & URBAN INST., IMPLICATIONS OF IMMIGRATION ENFORCEMENT ACTIVITIES FOR THE WELL-BEING OF CHILDREN IN IMMIGRANT FAMILIES (2015), https://www.migrationpolicy.org/sites/default/files/publications/ASPE-ChildrenofDeported-Lit%20Review-FINAL.pdf).

[68] *Id.* (citing AJAY CHAUDRY ET AL., THE URBAN INST., FACING OUR FUTURE: CHILDREN IN THE AFTERMATH OF IMMIGRATION ENFORCEMENT 41 (2010), https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF).

[69] *Id.* at 5 (citing Kalina M. Brabeck et al., *Framing Immigration to and Deportation from the United States: Guatemalan and Salvadoran Families Make Meaning of their Experience*, 14 COMMUNITY, WORK AND FAM. 275, 283 (2011)).

[70] *Id.* at 4 (citing Jana Sladkova et al., *Lowell Immigrant Communities in the Climate of Deportations*, 12 ANALYSES OF SOC. ISSUES AND PUB. POL'Y 78, 87 (2012)).

considering these additional costs and explaining why the Proposed Rule is justified despite them.

VI. DHS Should Provide Evidence for Its Estimate of 8 to 10 Hours of Familiarization Time

DHS states without any further explanation that it would take 8 to 10 hours per person for regulated individuals, lawyers, advocates, health care providers, non-profits, NGOs, religious groups, and others to read through the Proposed Rule and understand its implications sufficiently to advise their members and clients.[71] Given the length and complexity of the Proposed Rule, DHS should provide an explanation for how it arrived at such a low estimate.

Respectfully,

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Jack Lienke
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Felix Zhang

[71] 83 Fed. Reg. at 51,270.