



December 10, 2018

Sent via Electronic Submission at <https://www.regulations.gov>

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

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

Dear Ms. Deshommes:

The K12 Education Team at the Center for American Progress (CAP K12) submits the following comments in response to the October 10, 2018 notice by the Department of Homeland Security (DHS) of its proposed rulemaking on inadmissibility on public charge grounds. These K12-focused comments supplement the overall comments submitted by CAP on the proposed rule. As detailed in those comments, the proposed rule redefines what it means to be “likely to become a public charge” (LPC) in an unreasonably expansive manner. CAP opposes the rule because it will, *inter alia*, increase the risk of erroneous, arbitrary, and discriminatory LPC decisions; prevent U.S. citizens from reuniting with parents and other family members who are otherwise eligible for green cards; cause unjustifiable harm to millions of non-citizens and citizens in the United States; and impose considerable burdens on public, private, and non-profit entities.

As the K12 Education Team within the think-tank Center for American Progress, we are dedicated to developing policies that allow all children to reach their full potential through education. Part of achieving this goal means supporting public services that improve the health and well-being of children and parents.¹ Examples of these vital services include the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public programs targeted by this rule. By jeopardizing access to these services and programs, the proposed rule will negatively impact children, parents, and other essential caregivers, while also depriving children of parental and familial support. The direct harms caused by the rule will also make it

¹ American Psychological Association, *What are the Psychological Effects of Hunger on Children*, available at <http://www.apa.org/advocacy/socioeconomic-status/hunger.pdf>.



harder for millions of children in immigrant families to reach their full potential through education. For these reasons, we strongly urge DHS to withdraw the proposed rule in its entirety.

For over 100 years, U.S. immigration law has used the term “public charge” to mean a person who is a “charge” of the public officials. In the late 1800s and early 1900s, this typically meant being committed to a public official’s custody and management in an almshouse, public asylum or similar public institution. Since then, courts and the Executive Branch have consistently interpreted the term to mean someone who is being maintained at public expense in an institution, or who is completely dependent on public cash assistance for long-term income maintenance.² DHS’ proposed rule would expansively redefine what it means to be a public charge. Applicants for admission would be classified as “likely to become a public charge” if immigration officials predict they are likely to receive even modest amounts of Medicaid, the Supplemental Nutrition Assistance Program (SNAP), housing assistance, or Medicare Part D (LIS) subsidies. In addition, DHS is proposing a complex, variable-factor methodology for making LPC determinations that would massively increase the number of otherwise eligible applicants who are denied admission on LPC grounds. Most of the otherwise-eligible applicants who will be unfairly denied admission will be spouses, parents, or other close relatives of U.S. citizens and lawful permanent residents.

These changes will also negatively impact the well-being of U.S. citizen children and LPR children who are not subject to the LPC test, but live in families that include immigrants. Many immigrant parents of citizen and LPR children are likely to believe enrolling their children in Medicaid and other benefits will have negative immigration consequences, including deportation for LPR family members and denial of admission for immigrant family members who apply for adjustment or admission in the future. In the late 1990s, a hostile policy environment for immigrants, including restrictions placed on immigrant eligibility for benefits and confusion about the scope of the LPC test, contributed to substantial, disproportionate declines benefit enrollment among U.S. citizen children who lived in immigrant families.³ This proposed rule could trigger similar widespread un-enrollment and thus a loss of benefits for eligible children.⁴ Even now, before implementation of the proposed rule has begun, immigrant families are dropping out of federal programs like The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Agencies in at least 18 states have reported drops of up

² Under the 1999 guidance, which follows this longstanding interpretation, a public charge is someone who is “primarily dependent” on the government for subsistence. *See, e.g.*, Department of Justice, Immigration & Naturalization Serv., Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999).

³ J.B. Wogan, *Trump's Leaked Immigration Rule Already Having Impacts*, GOVERNING, March 2, 2018, <http://www.governing.com/topics/public-justice-safety/gov-leaked-immigration-trump-benefits.html>.

⁴ Helena Evich, *Immigrants, fearing Trump crackdown, drop out of nutrition programs*, POLITICO, Sept. 3, 2018, <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.



to 20 percent in enrollment – something they widely attribute to fears about the immigration policy.⁵ Furthermore, a study from the Kaiser Family Foundation found that the proposed rule could lead to an estimated 875,000 to 2 million citizen children with a non-citizen parent losing Medicaid/CHIP coverage, despite remaining eligible.⁶

In the realm of education, ever since the Trump Administration’s began its targeting of the immigrant community, early childhood education programs have reported drops in attendance and applications, as well as reduced participation from immigrant parents in classrooms and at events.⁷ Moreover, regular access to food, comprehensive medical care, and stable living environments are all necessities for children to grow and ultimately succeed in school and in life. When any of these areas are negatively impacted, as would likely occur if the proposed rule is implemented, the development of children will be undercut with serious, potentially life-long effects.⁸ For example, a longitudinal study of child development in Quebec found that children facing food insecurity were two times more likely to experience hyperactivity and inattention in school than children who are not food insecure.⁹ Other effects of poor nutrition include delayed social and emotional learning, as well as slowed cognitive development which can lead to lower standardized test scores.¹⁰ Therefore, food insecurity as a result of loss of family support and/or limited access to or fear of accessing programs like SNAP would rob immigrant children of the opportunity to gain the most out of their educational experience.

Additionally, under this proposed rule, immigrant families may decide not to enroll eligible family member in public health programs, including Medicaid and WIC, thereby depriving their children of reliable health care coverage. Without regular doctors’ visits and the access to vaccinations, prescriptions, and other services provided by a physician, children are more likely to get sick, miss school, and fall behind on their studies.¹¹ The negative effects of

⁵ Id.

⁶ Samantha Artiga, Anthony Damico, and Rachel Garfield, “Potential Effects of Public Charge Changes on Health Coverage for Citizen Children” (Kaiser Family Foundation, 2018) available at <https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/>

⁷ Hannah Matthews et al., *Immigration Policy’s Harmful Impacts on Early Care and Education*, The Center for Law and Social Policy, 2018, http://clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf.

⁸ Id.

⁹ Belsky et al., *Context and Sequelae of Food Insecurity in Children’s Development* (Am J Epidemiology, 172: 809, 2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2984258/>.

¹⁰ H Taras, *Nutrition and Student Performance at School* (Journal of School Health, 75, 2005).

¹¹ UC San Diego, *How Health Affects a Child’s School Performance*, 2006, available at https://health.ucsd.edu/news/2006/Pages/04_07_Taras.aspx.



this can impact a range of educational outcomes, including graduation rates and attendance.¹² In addition to physical health problems that may go untreated without access to regular doctors' visits, immigrant children living in fear for their families as a result of the Trump Administration's immigration policies often face a range of mental and emotional health issues. Without the vocabulary to express these feelings, many early childhood educators are seeing children undergo behavioral changes, such as increased aggression, hyperactivity, and withdrawal from their environments.¹³ Both the mental stress of today's toxic environment and its consequent behavioral changes have major negative impacts on a child's ability to learn.

Finally, the proposed rule would also include housing assistance in the expanded list of programs under consideration during the designation process. Very few immigrant children live in families receiving housing assistance, but for those who do, the rule would cause unwarranted harm, including housing instability and increased likelihood of living in unsafe or crowded conditions. This would exacerbate the environmental stressors that will negatively impact both parents and children in these families. Research on the effects of homelessness in children have shown that a lack of stable housing can lead to lower school achievement and increased risk of dropping out of school.¹⁴ Not only can children be affected directly by unstable circumstances, but they can also be negatively impacted by the general stress felt by their parents and other members of the household. Research has shown that high levels of parental stress, as would be felt by any parent facing the overwhelming barriers resulting from this proposed rule, can impair children's cognitive development and thus their educational outcomes.¹⁵

CAP K12 believes that all children should have the chance to reach their full potential through education. To achieve this end, children need the support and care of parents and other close family members. Additionally, their parents shouldn't fear or be blocked from accessing public programs that promote children's health, nutrition, and housing stability. The proposed

¹² Sarah Cohodes et al., *The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions* 4, 5 & 23 (Nat'l Bureau of Econ. Research, Working Paper No. 20178, 2014), available at <https://www.nber.org/papers/w20178>.

¹³ Cervantes, Ullrich, and Matthews, *Our Children's Fear: Immigration Policy's Effects on Young Children*, Center for Law and Social Policy, 2018, https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

¹⁴ Press Release, U.S. Department of Education, Education Department Releases Guidance on Homeless Children and Youth (Jul. 27, 2016), available at <https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth>; U.S. Dep't of Educ. & U.S. Dep't of Health and Human Servs., Dear Colleague Letter: Elementary and Secondary Education Act (June 23, 2016), available at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>.

¹⁵ HIROKAZU YOSHIKAWA, IMMIGRANTS RAISING CITIZENS UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 23-24 (2011); Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis* 28-32 (Urban Inst., Low-Income Working Families, Discussion Paper No. 3, 2013), available at <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.



rule could separate children from parents and other family members, while also making it more difficult for children in immigrant families to achieve the educational attainment of their peers. For the sake of these families and the future of their children, we urge you to withdraw this harmful proposed rule in its entirety.

Sincerely,

Center for American Progress
K12 Education Team