

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

December 10, 2018

Submitted via www.regulations.gov

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

Justice in Aging is strongly opposed to the Department of Homeland Security's (DHS) proposed changes to "public charge" in the above referenced Notice of Proposed Rulemaking (NPRM or proposed rule). The proposed rule targets older immigrants and their families, causing them as well as their communities, states, and health care systems serious harm. Furthermore, DHS has failed to provide any adequate justification for why these changes are needed. Therefore, we urge DHS to withdraw the proposed rule, and to ensure that long-standing principles clarified in the 1999 Field Guidance remain in effect.

Justice in Aging is a non-profit organization with the mission of improving the lives of low-income older adults living in the United States. For 46 years, we have used the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Our mission is to secure the opportunity for older adults to live with dignity, regardless of financial circumstances—free from the worry, harm, and injustice caused by lack of health care, food, or a safe place to sleep.

Using our deep expertise in Social Security, Supplemental Security Income, Medicare and Medicaid, we work to strengthen the social safety net and remove the barriers low-income seniors face in trying to access the services they need. We also provide technical expertise to thousands of advocates across the country on how to help low-income older adults access the programs and services they need to meet their basic needs. Our advocacy centers on populations that have traditionally lacked legal protection, including people of color, people with limited English proficiency (LEP), women, and LGBTQ individuals.

Our comments focus primarily on the harms the proposed changes will have by specifically targeting older adults and their families. Our comments also discuss the negative impact the proposed rule will have on people with disabilities, and on communities, states, and health care systems. We have cited research demonstrating the harms of the proposed rule changes and we respectfully request that DHS review each of the sources cited and made available to the

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agency through active hyperlinks. We further request that the full text of each of the sources cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

The proposed changes to the definition of public charge and the weighing of the factors in the totality of the circumstances test will make it nearly impossible for an older adult to pass the public charge test. Because these changes would fundamentally and radically shift American immigration policy to count wealth and income as the primary indicators of a person's contribution and discount the value of intergenerational families and DHS has failed to adequately justify them, the NPRM must not be adopted.

I. The Proposed Rule Would Radically Change Current Public Charge Policy and Specifically Target Older Immigrants and People with Disabilities

We strongly oppose the proposal to change the definition of “public charge” from a person who is “likely to become primarily dependent on the government for subsistence” to a person who “receives one or more public benefits” as well as the proposed expansion of the definition of “public benefit” for purposes of public charge determination. First, these changes would abandon longstanding guidance that only cash “welfare” assistance for income maintenance and government funded long-term institutional care can be taken into consideration in the “public charge” test – and only when it represents the majority of a person's support. Second, this change would radically expand the scope of public charge to include older adults who use basic needs programs to supplement their savings or fixed incomes during retirement, as well as others with earnings from low-wage work. If the NPRM is finalized, immigration officials could consider a much wider range of government programs in the “public charge” determination: most Medicaid programs, including Medicare Savings Programs; the Medicare Part D low-income subsidy for seniors, including those who have accumulated the necessary work history themselves or through a spouse to qualify for Social Security; housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing; and SNAP (Supplemental Nutrition Assistance Program, formerly Food Stamps). DHS asks whether additional programs should be considered in the public charge determination. We strongly oppose adding any programs and believe the inclusion of programs proposed in the NPRM already mark a dramatic and dangerous departure from well-established guidance and congressional intent.

The proposed rule would also assign negative weight to numerous factors that disproportionately apply to older adults, some of which have never been relevant to the public charge determination. In particular, the proposed rule details how being over age 62, having a large family, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. In addition to the clear bias against older adults based on age, these named factors disproportionately target seniors because they often live in intergenerational

households with several family members,¹ and the vast majority of adults over age 50 have at least one chronic health condition.²

The NPRM contains new language describing how an individual's health is to be considered in making public charge determinations. The new language would specify that, when considering an individual's health, DHS will consider "whether the alien has any physical or mental condition that . . . is significant enough to interfere with the person's ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future."³ This standard is so broad that virtually every person with any type of significant disability, as well as many individuals with less significant disabilities, would have their disability or other chronic health conditions count against them in the public charge test. This standard would also unfairly tip the balance of factors against most older adults dually eligible for Medicare and Medicaid, nearly 70% of whom have at least three chronic conditions and half of whom use long-term services and supports.⁴

The rule also indicates a preference for immigrants who speak English. This preference is particularly problematic because a majority of older immigrants are LEP.⁵ The public charge test applies to people when they first enter the U.S. or apply for lawful permanent residence. Parents of U.S. citizens and other older adults from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English. Moreover, the public charge statute does not include English proficiency as a factor to be considered in an individual's assessment and instead refers only to "education and skills," among other factors. Congress did not impose an English language test on applicants for lawful permanent residence, but instead enacted laws that explicitly require an English test for lawful permanent residents who have lived in the U.S. for a number of years and are applying to become a U.S. Citizen, and even then the English test is subject to exemptions for older adults in particular circumstances.

The U.S. does not have a national language, and no law allows the government to give preference to those who speak English over those who are limited English proficient (LEP). In contrast to this proposal, federal civil rights laws protect LEP persons from discrimination on the basis of English proficiency. Title VI, 42 U.S.C. § 2000d of the Civil Rights Act prohibits

¹ Foreign-born U.S. residents are more likely than U.S. born to live in multi-generational households. (See www.pewsocialtrends.org/2014/07/17/the-growth-in-multi-generational-family-households/); and household size for foreign-born U.S. residents are on average larger than for U.S. born residents (see www.migrationpolicy.org/data/state-profiles/state/demographics/US.)

² AARP Public Policy Institute, Chronic Care: A Call to Action for Health Reform 11–12, 16 (March 2009), available at www.aarp.org/health/medicare-insurance/info-03-2009/beyond_50_hcr.html.

³ 83 Fed. Reg. 51182.

⁴ Centers for Medicare & Medicaid Services, PEOPLE ENROLLED IN MEDICARE AND MEDICAID (Feb. 2018), available at www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf.

⁵ Jeanne Batalova, Senior Immigrants in the United States (May 30, 2012), available at www.migrationpolicy.org/article/senior-immigrants-united-states#5.

discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Title VII, 42 U.S.C. § 2000e of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. And, as the Supreme Court held in *Lau v. Nichols*, 414 U.S. 563 (1974), discrimination on the basis of language or English proficiency is a form of national origin discrimination in violation of Title VI.

By giving de-facto preference to individuals from English speaking nations, DHS is undermining the careful balancing that Congress created to move the country away from the racist quota system. In particular, this standard disproportionately impacts older Asian immigrants. Asian people in the U.S. have the highest rates of limited English proficiency. Eighty percent of Asian American and Pacific Islander older adults are immigrants, and almost 60% have limited English proficiency.⁶

Finally, the proposed rule introduces an arbitrary and unprecedented income test. Over 1.1 million noncitizens age 62 and older live in low- or moderate income households,⁷ meaning that under this test they would have no “heavily weighed” positive factors to offset the fact that their age is considered a negative factor. The income test also discredits even full-time work at low wages as failing to contribute to society. Immigrant older adults are more likely to have been in the country for many decades⁸ and over that substantial amount of time, contributed to our nation’s economy and been integrated into the fabric of our country. In addition, the proposed test pretends scientific objectivity but actually puts a thumb on the scale to give further negative weight to having limited income by naming experiences correlated with it, such as lack of employment, lack of private health insurance, and poor credit scores.

II. The Proposed Changes Are Not Justified by Any Rationale

DHS has failed to justify the need for the massive changes it is proposing and account for or fully consider the harms it will cause. As detailed below, the proposed changes will greatly harm older immigrants and their families living in the U.S. In fact, DHS acknowledges in the NPRM that the changes would harm individuals, families, and communities. However, it fails to quantify the harm and therefore largely ignores it.

In the NPRM, DHS states that it “seeks to better ensure that applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient, *i.e.*, do not depend on

⁶ National Asian Pacific Center on Aging, *The Emerging Needs of Asian American and Pacific Islander Older Adults* (Feb. 2017), available at napca.org/wp-content/uploads/2017/10/NAPCA-The-Emerging-Needs-of-AAPI-Older-Adults-Final-Report-Feb2017.pdf. See also data showing that 75% of the “Asian alone” population speaks a language other than English at home and 35% are LEP. Karthick Ramakrishnan et al, *Language Diversity and English Proficiency*, Center for American Progress (May 27, 2014) <https://cdn.americanprogress.org/wp-content/uploads/2014/04/AAPI-LanguageAccess1.pdf>.

⁷ Manatt, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (Oct. 11, 2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>

⁸ 75% of older immigrants came to the United States in the 1980s or earlier.

public resources to meet their needs, but rather rely on their own capabilities, as well as the resources of family members, sponsors, and private organizations.”⁹ However, by creating an arbitrary income test that most low-wage workers cannot meet, assigning negative weight to other factors that are associated with having low-income, and penalizing individuals who utilize even modest amounts of public benefits to supplement their incomes, the proposed rule would actually inhibit individuals who are not wealthy from being self-sufficient. Additionally, in direct contrast to DHS’s stated intent, the proposed changes explicitly diminish the importance of sponsor affidavits and support of family members by negatively weighing having a larger family. In particular, the proposed rule’s bias against older adults will make it impossible for younger adults, immigrants and citizens alike, to rely on family to meet their needs. This is because, as explained below, the proposed changes will prevent many intergenerational families from living together, to care for one another and support each other.

Moreover, both research and Congressional actions over the nearly 20 years that the 1999 Field Guidance has been in effect provide ample evidence that there is no problem with implementation of the public charge rule now and no persuasive rationale for changing it, especially in such a radical and fundamental way. In fact, this history supports the importance of the very benefits DHS is proposing to consider as supporting individuals and families in becoming self-sufficient. Contrary to DHS’s stated rationale in the NPRM, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for and receiving certain non-cash benefits and legal immigrants’ use of public assistance programs declined significantly. In response to concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued an administrative guidance in 1999. The Field Guidance, which remains in effect today, clarifies that the public charge test applies only to those “primarily dependent on the government for subsistence”, demonstrated by receipt of public cash assistance for “income maintenance”, or institutionalization for long-term care at government expense. INS provided several reasons for deciding to adopt this definition of public charge, including the observation that non-cash benefits “serve important public interests,” “are by their nature supplemental” and participation in such non-cash programs is “not evidence of poverty or dependence.”¹⁰ INS also recognized that benefits are “increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health

⁹ 83 Fed. Reg. 51122.

¹⁰ 64 Fed. Reg. at 28,692, U.S. Government Publishing Office, May 26, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13202.htm>.

and nutrition, promoting education, and assisting working poor families in the process of becoming self-sufficient."¹¹ The Field Guidance also specifically lists non-cash programs NOT to be considered for purposes of public charge, including Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief as programs. Since that time, Congress has made explicit choices to expand eligibility (or permit states to do so) under these programs, including the 2002 and 2008 Farm Bills, which made it easier for low-income working families to receive SNAP benefits and the 2010 Patient Protection and Affordable Care Act, which expanded Medicaid access for millions of low-income working families.

Finally, in the NPRM, DHS states that the 1999 Guidance did not "sufficiently" describe the mandatory factors in the public charge totality of the circumstances test, but provides no evidence of any resulting problems. Rather, DHS's assertion that the Field Guidance is insufficient is undermined by the fact that the Guidance has remained in effect through both Democratic and Republican administrations with no indication that INS or DHS have had any difficulties in implementing it.

III. The Proposed Rule Would Disproportionately Harm Older Adults of Color

Because this rule targets family-based immigration as well as low and moderate wage workers, it will also have a disproportionate impact on seniors of color. While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people potentially discouraged from seeking services by the proposed rule, approximately 90% are people from communities of color (23.2 million). An estimated 70% are Latino (18.3 million), 12% are Asian American and Pacific Islander (3.2 million), and 7% are Black (1.8 million).¹² By another estimate, over 55% of noncitizen Hispanic and over 45% of Asian American and Pacific Islander adults age 55 and older live in families receiving Medicaid/CHIP, SSI, TANF or general assistance, and/or SNAP and thus could be discouraged from seeking these benefits.¹³

The disproportionate impact on communities of color provides additional evidence of the radical effect this rule would have in reshaping the country's population. Not only would it cause disproportionate harm among people of color with unmet health and nutrition needs, it would dramatically reduce the diversity of immigrants entering the US and obtaining green

¹¹ Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the [Immigration and Naturalization Service](https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm) on 05/26/1999; 64 Federal Register 28678, U.S. Government Publishing Office, May 26, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm>.

¹² 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

¹³ Migration Policy Institute, Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use (June 2018), available at www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

cards, reshaping the demographics of this country for decades to come. According to recent analysis by the Migration Policy Institute, the proposed rule would likely cause a significant shift in the origins of immigrants seeking visas and green cards, away from Mexico and Central America and towards Europe.¹⁴ Thus, this proposal should be rejected because it would reduce the diversity of immigration to the United States and cause further harm by disproportionately increasing family separation among immigrants of color – and US citizens – already residing in the US.

IV. The Proposed Rule Would Make It Nearly Impossible for an Older Adult to Pass the Public Charge Test and Thereby Prevent U.S. Citizens from Welcoming Their Parents to Join Them in the U.S.

The number of seniors in the United States who are immigrants is growing. Between 1990 and 2010, the number of immigrants age 65 and older grew from 2.7 million to nearly 5 million. This is due to aging of the immigrant population who arrived during the 1970s, 80s and 90s, as well as the rise in naturalized citizens who sponsor their parents to immigrate to the U.S. Additionally, the number of parents of U.S. citizens who have been admitted as legal permanent residents nearly tripled between 1994 and 2017 and now account for almost 15% of all admissions and almost 30% of family-based admissions.¹⁵

The proposed changes would prevent many U.S. citizens from being able to welcome their own parents into the country, even after they signed a commitment to support them. This is because the factors outlined above will make it nearly impossible for an older adult to pass the public charge test. More than 1.1 million noncitizens age 62 and older would have no “heavily weighed” positive factors to offset the fact that their age is considered a negative factor because they live in low- or moderate income households.¹⁶ Families could even be penalized for sharing housing or providing significant support to a parent or grandparent or other family member, as this would increase their household size and force them to demonstrate higher levels of income to avoid being considered a public charge. In the NPRM, DHS neither recognizes the value of intergenerational families who support each other, nor accounts for the costs of separating these families. Instead, the proposed rule specifically targets and callously labels older adults who are parents and grandparents as a burden because of their age, health needs, and LEP status, ignoring the critical roles many grandparents play in caring for their grandchildren and other family members, often enabling others to work.

¹⁴ Migration Policy Institute, Gauging the Impact of DHS’ Proposed Public-Charge Rule on U.S. Immigration (Nov. 2018),

[available at www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration](http://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration).

¹⁵ Dept. of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table 7, available at

www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf.

¹⁶ Manatt, Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard (Oct. 11, 2018),

<https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>

V. The Proposed Rule Would Harm Older Adults Living in Immigrant Families & Their Communities

This proposed rule would impact seniors living in immigrant families in the U.S. who may stop accessing services they need and that their own tax dollars support out of fear of being penalized. The rule would increase poverty, hunger, ill health, and housing insecurity by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for seniors and their families' well-being and long-term success.

The widespread "chilling effect" that causes families to withdraw from benefits due to fear is already evident as a result of publicity around the proposed rule. In fact, we have heard from advocates and providers across the country that older immigrants and their families are already dis-enrolling from benefits that they are eligible for and have stopped accessing services because they fear accessing these benefits will negatively impact their immigration status. Historical evidence from the 1996 PRWORA policy changes, which DHS cites in the NPRM, demonstrates that providing information to the public cannot prevent these damaging consequences because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically.¹⁷

A. Access to Health Care

Having health insurance is especially important for older adults because they have greater health care needs. Without ongoing coverage and the assistance they need to afford their prescription drugs and other care and services, seniors are likely to develop more serious health care conditions, driving up the cost of care and creating a new uncompensated care burden on health care providers.

Medicare is a lifeline for most seniors, including immigrant seniors who have worked for many years in the U.S. and earned this benefit. Medicare provides coverage for hospital stays, doctors' visits, and prescription drugs. However, many Medicare beneficiaries rely on other programs to help them afford out-of-pocket costs. Almost 1 in 3 Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy.¹⁸ And nearly 7 million seniors 65 and older are enrolled in

¹⁷ Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," *Health Services Research*, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

¹⁸ Kaiser Family Foundation, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing* (May 17, 2018), available at www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.¹⁹

Medicaid is critical for long-term services and supports. Because they could be penalized for or fear being penalized for accessing Medicaid home and community-based services, fewer older adults will be able to age with dignity, at home with their families and in their communities. Medicaid is also the key to access to oral health care, transportation, and other services Medicare does not cover and older adults could otherwise not afford.

B. Access to Nutrition & Housing Support

Low-income seniors also greatly benefit from programs such as Section 8 rental assistance and SNAP to meet their basic needs.²⁰ If immigrant families are afraid of being penalized for accessing nutrition assistance programs, more older adults will be food insecure and at risk of unhealthy eating, which can cause or exacerbate other health conditions and unnecessarily burden the healthcare system. If immigrant families are afraid of being penalized for seeking housing assistance, seniors with limited, fixed incomes and their families will have fewer resources to spend on other basic needs, including food, medicine, transportation, and clothing.

C. Harms to Communities

The fear created by these rules would extend far beyond any individual who may be subject to the “public charge” test, harming entire communities as well as the infrastructure that serves all of us, such as hospitals, health clinics, and schools. All of these consequences are identified in the NPRM under costs, and a substantial body of evidence demonstrates that they are highly significant and damaging.

When older adults and others are afraid they will be penalized for accessing these services, not only does their own health and well-being suffer, but the effects ripple through the community. For example, if an individual who is eligible for Medicaid is discouraged from enrolling in coverage, they are less likely to get primary care they need and more likely to end up in the emergency room, driving up the hospital’s uncompensated care costs. An individual may even refuse to get Emergency Medicaid coverage because they fear that any use of Medicaid could have negative consequences on their immigration status.

¹⁹ Kaiser Family Foundation, Medicaid Enrollment by Age, www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1¤tTimeframe=0&sortModel=%7B%22collid%22:%22Location%22,%22sort%22:%22asc%22%7D

²⁰ See Justice in Aging, Supporting Older Americans’ Basic Needs: Health Care, Income, Housing and Food (Apr. 2018), available at www.justiceinaging.org/wp-content/uploads/2018/04/Supporting-Older-Americans%E2%80%99-Basic-Needs-Health-Care-Income-Housing-and-Food.pdf.

VI. The proposed rule threatens the well-being of caregivers, many of whom are immigrants.

Direct care workers provide critical assistance to millions of older adults and people with disabilities who need help with dressing, bathing, eating, and other daily tasks. An estimated one million immigrants work in direct care, making up a quarter of the direct care workforce.²¹ More than four in five are women, and nearly a third are over age 55. Because caregiving jobs tend to be part time and low-wage, many direct care workers utilize public benefits programs to support themselves and their families. Nearly half of immigrant direct care workers live at or below 200% of the federal poverty level, and more than 40% rely on programs such as SNAP and Medicaid.²²

If direct care workers are afraid they will be penalized for accessing these programs, their own health and well-being will be compromised. Moreover, care workers who would need to use these programs to supplement their low-wage work may be prevented from coming to the U.S. in the first place. Many others may be unable to afford to remain the U.S. without this support. The ripple effect would be a shortage in direct care workers, leaving many older Americans and people with disabilities without access to the caregiving they need and furthering the negative impact on healthcare systems in local communities.

VII. The Proposed Rule Would Increase State, Local, and Federal Agency Costs and Negatively Affect Program Administration

As previously discussed, the proposed rule would pressure large numbers of immigrants and their families to forgo enrolling in vital programs such as Medicaid and the Medicare Part D LIS, nutrition assistance, and housing that their families are eligible for and need. The rule will also create new challenges for federal, state and local agencies administering these programs, not only increasing the agencies' workload, but also creating administrative burdens that can have negative effects throughout the programs and on all the beneficiaries they are charged with serving.

For example, agencies will need to provide immigrants with documentation regarding their history of benefit receipt, respond to consumer inquiries related to a complicated new policy, and change existing communications and forms related to public charge. Each of these tasks will generate a huge workload for agencies. Moreover, as beneficiaries learn about the new rule, some will terminate their participation in programs, which has already happened in response to draft public charge-related proposed rule changes being leaked to the media.²³ But, because these programs support vital needs, some of these families would likely re-enroll. This

²¹ Robert Espinoza, PHI, *Immigrants and the Direct Care Workforce* (June 20, 2017), *available at* <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>.

²²*Id.*

²³ Emily Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, *New York Times*, 2018, www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

off and on approach to benefit enrollment not only yields negative results for families, it also results in duplicative work for agencies. Churn is expensive for states; in one study of SNAP-related churn, the costs averaged \$80 for each instance of churn that requires a new application.²⁴

When states and agencies have to put more money and resources towards dealing with new issues such as those created by this proposed rule, they have less money and resources to maintain or enhance these programs and services. DHS fails to adequately account for these additional costs and challenges, and the consequential harm to everyone who needs these vital programs and supports.

Conclusion

The changes to the public charge test that DHS has proposed are massive and not justified by any adequate rationale. The proposed rule would create a multitude of ways for individuals, and particularly low-income older adults, to fail the public charge test, and very few ways to overcome it. If this rule were implemented it would change America's system of family-based immigration to grant preference to immigrants who are young and wealthy in ways that the Administration has proposed through legislation but that Congress has rejected. Therefore, we strongly oppose the NPRM and urge DHS to withdraw it in its entirety.

Thank you for considering our comments. If any questions arise concerning this submission, please contact Natalie Kean, Staff Attorney at Justice in Aging, at nkean@justiceinaging.org.

Sincerely,



Kevin Prindiville

Executive Director

²⁴ Gregory Mills et al., "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) - Final Report," Prepared by Urban Institute for the US Department of Agriculture, Food and Nutrition Service, 2014, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf>.