



**COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



**HECTOR H. BALDERAS**  
ATTORNEY GENERAL

December 10, 2018

***Via Federal eRulemaking Portal***

Samantha Deshommès  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
Attention: Inadmissibility on Public Charge Grounds  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

RE: Comment on Proposed Rule: Inadmissibility on Public Charge Grounds,  
DHS Docket No. USCIS-2010-0012 (October 10, 2018)

Dear Chief Deshommès,

On behalf of the Commonwealths of Virginia, Pennsylvania, and Massachusetts, the States of New Mexico, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, the District of Columbia, and Attorneys General-elect of Connecticut, Delaware, Illinois, Minnesota, and New York (collectively, the States), we write to object to *Inadmissibility on Public Charge Grounds*, RIN 1615-AA22 (Proposed Rule), a rule proposed by the U.S. Department of Homeland Security (the Department) on September 22, 2018 and published in the Federal Register on October 10, 2018.

The Proposed Rule seeks to drastically revise and expand the definition of “public charge” from “[a] person who is very likely to become ‘*primarily dependent*’ on government services”<sup>1</sup> to a person who receives minimal public assistance for a relatively short time. The 1999 version of the rule looked to cash benefits or cash subsidies to assess public charge status. In contrast, the Proposed Rule would engage in a public charge analysis whenever a person (i) receives certain public benefits or cash subsidies in excess of fifteen percent of the Federal Poverty

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<sup>1</sup> *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,677 (May 26, 1999) (emphasis added).

Guideline (FPG) for a household of one within any period of twelve consecutive months, or (ii) receives certain non-monetary benefits for more than a twelve-month period.<sup>2</sup> Under this approach, a public charge determination would be made based on the receipt of benefits totaling approximately \$150 per month in value.<sup>3</sup> The non-cash benefits that would be considered under the Proposed Rule include housing assistance, Medicaid, Medicare Part D low-income subsidies, the Supplemental Nutrition Assistance Program (SNAP) and, potentially, the Children’s Health Insurance Program (CHIP) and other “unenumerated” benefits.<sup>4</sup>

These changes would cause significant harm to the States and their residents. In addition to being bad policy, the Proposed Rule does not comport with the law because it is contrary to the long-established common-law definition of public charge. The Proposed Rule further violates the law because its public charge definition is grossly over-inclusive, encompassing a wide range of people who are substantially self-supporting and not primarily dependent upon the government to meet their basic needs. The Proposed Rule would effectively weaponize assistance programs and harm the very populations those programs were designed to help. For all of these reasons, the Proposed Rule is arbitrary and capricious and contrary to law, and should be withdrawn.

**I. The Proposed Rule is destabilizing, discriminatory, and will cause harm to immigrant populations and to the States**

The States have serious concerns about the Proposed Rule’s addition of Medicaid to the public charge consideration and about the prospect of potentially including CHIP in the public charge analysis. As currently framed, the Proposed Rule will burden states with additional healthcare costs, will harm families, discriminates against people with disabilities, and improperly disfavors non-English speakers. The addition of CHIP to the public charge consideration would only exacerbate the existing problems with the Proposed Rule.

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<sup>2</sup> *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114 and 51,164 (Oct. 10, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> Although the Immigration and Nationality Act authorizes the admission of immigrants who are inadmissible as public charges if they post a “suitable and proper bond,” 8 U.S.C.A. § 1183, the Proposed Rule would increase the amount of this bond tenfold. *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,219.

**a. Including Medicaid in the public charge analysis would cause a decrease in proper medical care and impose unnecessary costs on the States and their residents**

Under the Proposed Rule, a Medicaid program enrollee's receipt of healthcare benefits for more than a couple of months may lead to the recipient being deemed inadmissible as a public charge. The tension created by the Proposed Rule between immigration status and Medicaid benefits would lead to a reduction in program enrollment and, ultimately, would increase costs to the States and their residents for state-funded public health clinics, school health programs, and uncompensated emergency care. The States are concerned that these reductions in enrollment will be especially far-reaching for Medicaid.<sup>5</sup>

In 2019, more than 30 States will offer Medicaid to even greater numbers of residents than in previous years. In Virginia, for example, 983,000 people are receiving Medicaid benefits in 2018 and that number may rise to 1,406,000 in 2019.<sup>6</sup> In New Mexico, nearly 830,000 people received Medicaid in October 2018.<sup>7</sup> New Jersey's Medicaid and CHIP programs serve approximately 1.8 million low- and moderate-income residents, or nearly 20% of the population of the State.<sup>8</sup> In 2017, approximately 3,162,796 Illinoisans received Medicaid benefits,<sup>9</sup> almost 25%

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<sup>5</sup> Kaiser Family Foundation, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* (Oct. 2018), <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid> (drawing on research on the chilling effect welfare reform had on enrollment in health coverage among immigrant families to examine a drop in Medicaid enrollees of between 15% and 35% of immigrant families otherwise eligible for benefits (or between 2.1 and 4.9 million people) as a result of the Proposed Rule) (last visited Dec. 10, 2018).

<sup>6</sup> Matthew Buettgens, Urban Institute, *The Implications of Medicaid Expansion in the Remaining States: 2018 Update*, at 4 (May 2018), <https://www.urban.org/research/publication/implications-medicare-expansion-remaining-states-2018-update> (last visited Dec. 10, 2018).

<sup>7</sup> N.M. Human Servs. Department monthly reports for October 2018, <http://www.hsd.state.nm.us/LookingForInformation/medicaid-eligibility.aspx> (last visited Dec. 10, 2018).

<sup>8</sup> N.J. Div. of Medical Assistance & Health Servs., [http://www.njfamilycare.org/analytics/about\\_us.html](http://www.njfamilycare.org/analytics/about_us.html); New Jersey Division of Medical Assistance & Health Services, *NJ FamilyCare Monthly Enrollment Statistics* (Sept. 2018), [https://www.state.nj.us/humanservices/dmahs/news/reports/enrollment\\_2018\\_9.pdf](https://www.state.nj.us/humanservices/dmahs/news/reports/enrollment_2018_9.pdf) (last visited Dec. 10, 2018).

<sup>9</sup> State of Illinois Comptroller, Illinois Public Accountability Report Fiscal Year 2017, at 7 (2018), <https://illinoiscomptroller.gov/financial-data/find-a-report/public-accountability-report/fiscal-year-2017/> (last visited Dec. 10, 2018).

of the State's population.<sup>10</sup> In Pennsylvania, 107,114 immigrant families were enrolled in Medicaid in 2017.<sup>11</sup> As of September 2018, Massachusetts has enrolled up to 1,599,120 people in Medicaid and CHIP—a net increase of 23.35% since October 2013.<sup>12</sup> As of August 2018, approximately 6,491,631 New Yorkers were enrolled in CHIP and Medicaid.<sup>13</sup> According to the Department, enrollment of citizens and non-citizens in Medicaid is roughly proportional to their respective population numbers; therefore, if inclusion of Medicaid in the public charge analysis dissuades Medicaid participation for non-citizens, it will likely have a significant impact on states with large non-citizen populations.<sup>14</sup>

Medicaid funding also supports other important programs. For example, New Mexico, which in 2016 had the third-highest rate nationally of births to unwed mothers and the seventh-highest teen birth rate,<sup>15</sup> provides Medicaid funding for pregnancy-related services to women with household incomes of up to 250% of the FPG.<sup>16</sup> New Mexico provided family planning services to 58,293 residents in October 2018 and covered nearly 357,000 children through Medicaid.<sup>17</sup> Massachusetts offers Medicaid benefits for adults and children with disabilities who would not otherwise be income-eligible for Medicaid.<sup>18</sup>

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<sup>10</sup> U.S. Census Bur., *QuickFacts: Illinois*, <https://www.census.gov/quickfacts/il> (last visited Dec. 10, 2018).

<sup>11</sup> Pennsylvania Department of Human Services data on file with Community Legal Services.

<sup>12</sup> Centers for Medicare & Medicaid Services, *Medicaid & CHIP in Massachusetts*, <https://www.medicare.gov/state-overviews/stateprofile.html?state=massachusetts> (last visited Dec. 10, 2018).

<sup>13</sup> Centers for Medicare & Medicaid Services, *Medicaid & CHIP in New York*, <https://www.medicare.gov/state-overviews/stateprofile.html?state=new-york> (last visited Dec. 10, 2018).

<sup>14</sup> Draft *Inadmissibility on Public Charge Grounds*, 102–03 (Sept. 22, 2018), [https://www.dhs.gov/sites/default/files/publications/18\\_0921\\_USCIS\\_Proposed-Rule-Public-Charge.pdf](https://www.dhs.gov/sites/default/files/publications/18_0921_USCIS_Proposed-Rule-Public-Charge.pdf) (using data from USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation) (last visited Dec. 10, 2018).

<sup>15</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, <https://www.cdc.gov/nchs/pressroom/states/newmexico/newmexico.htm> (last visited Dec. 10, 2018).

<sup>16</sup> Louise Norris, *New Mexico and the ACA's Medicaid expansion* (Mar. 16, 2018), <https://www.healthinsurance.org/new-mexico-medicare/> (last visited Dec. 10, 2018).

<sup>17</sup> Human Servs. Dep't, *Medicaid Eligibility Reports*, <http://www.hsd.state.nm.us/LookingForInformation/medicaid-eligibility.aspx> (last visited Oct. 19, 2018).

<sup>18</sup> *MassHealth coverage types for individuals and families including people with disabilities*, <https://www.mass.gov/service-details/masshealth-coverage-types-for-individuals-and-families-including-people-with> (last visited Dec. 10, 2018).

It is well-documented that increasing access to healthcare helps the economy because it allows more people to work and decreases the transmission of diseases that inhibit work and boost hospital costs.<sup>19</sup> At a time when Medicaid enrollment numbers are at an all-time high, the Department’s proposal risks punishing certain Medicaid participants. Moreover, fear of this new immigration policy will cause many eligible immigrants—including some who are exempt from the Proposed Rule altogether—to drop their benefits or decline to enroll. Because the public charge inadmissibility formula is complex and layered, it will be difficult for many immigrants to understand whether or how it applies to them. Even immigrants who fall into categories that are exempt from the public charge inadmissibility determination may nevertheless forgo Medicaid benefits simply out of fear. Despite “acknowledg[ing] the importance of increasing access to healthcare and helping people to become self-sufficient,” the Proposed Rule undercuts these goals by broadly including Medicaid in its public charge consideration.<sup>20</sup>

A drop in Medicaid enrollment would likely result in significant public health challenges, including increased costs to the States and their residents. People who lack health insurance will likely either forgo needed medical care, incur unaffordable medical costs, or will shift costs to the States and private hospitals by relying on emergency care when they experience acute medical conditions, or by relying on state-funded public health clinics and school-based health services.<sup>21</sup> Delayed healthcare can lead to worsening medical conditions and complications that will ultimately require more expensive medical treatment.<sup>22</sup> The resulting increased reliance on emergency services will financially burden the healthcare system and

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<sup>19</sup> CDC Foundation, *Worker Illness and Injury Costs U.S. Employers \$225.8 Billion Annually*, <https://www.cdcfoundation.org/pr/2015/worker-illness-and-injury-costs-us-employers-225-billion-annually> (last visited Dec. 10, 2018); National Immigration Law Center, *Increasing Access to Health Insurance Benefits Everyone*, <https://www.nilc.org/issues/health-care/health-system-impacts-of-increasing-access/> (last visited Dec. 10, 2018); U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Effects of Health Care Spending on the U.S. Economy*, <https://aspe.hhs.gov/basic-report/effects-health-care-spending-us-economy> (studies by federal agencies finding that as individual healthcare spending increases, economic activity generally decreases) (last visited Dec. 10, 2018).

<sup>20</sup> 83 Fed. Reg. 51,158 n. 258.

<sup>21</sup> Pennsylvania, for example, estimates it will lose more than \$220 million in federal Medicaid funds as a result of this drop in Medicaid enrollment, the majority of which will then be shifted to Pennsylvania hospitals. Cindy Mann, April Grady, & Allison Orris, *Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule* at 13 (Nov. 2018) <https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ> (last visited Dec. 10, 2018).

<sup>22</sup> See Kraft et al., *The Health and Cost Impact of Care Delay and the Experimental Impact of Insurance on Reducing Delays*, 155 *The Journal of Pediatrics* 2 (Aug. 2009).

the States and thus recreate the exact problem that Medicaid programs were designed to avoid.<sup>23</sup> Furthermore, decreased medical care will likely lead to a decline in vaccinations and higher incidences of communicable diseases.<sup>24</sup> As drafted, therefore, the Proposed Rule poses risks to public health that can and should be avoided.

It is also fundamentally unfair to punish working immigrants for participating in Medicaid. Like United States citizens, the majority of working immigrants pay taxes. According to a recently published study by healthcare researchers at Harvard University and Tufts University, immigrants pay more into the United States healthcare system than they take out and likely even help subsidize the care of United States citizens.<sup>25</sup> Immigrants who lawfully reside and work in this country should not be penalized for using an important healthcare program for which they are eligible and which their tax dollars help fund.

**b. The Proposed Rule would destabilize families—a consequence that will be exacerbated if CHIP were included in the public charge analysis**

The Proposed Rule does not exclude children from the public charge analysis. Failure to exempt children from the Proposed Rule would destabilize families. Indeed, in an earlier reported draft of the Proposed Rule, the Department acknowledged that its new definition of public charge “ha[d] the potential to erode family stability and decrease disposable income of families and children” because the then-contemplated action would have “provide[d] a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.”<sup>26</sup> Although the current version no longer considers receipt

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<sup>23</sup> Henry J. Kaiser Family Foundation, *Why Does the Medicaid Debate Matter? National Data and Voices of People with Medicaid Highlight Medicaid’s Role*, <https://www.kff.org/medicaid/fact-sheet/why-does-the-medicaid-debate-matter-national-data-and-voices-of-people-with-medicaid-highlight-medicaids-role/> (last visited Dec. 10, 2018).

<sup>24</sup> Centers for Disease Control and Prevention, *Vaccination Coverage Among Children Aged 19-35 Months – United States 2017*, [https://www.cdc.gov/mmwr/volumes/67/wr/mm6740a4.htm?s\\_cid=mm6740a4\\_w](https://www.cdc.gov/mmwr/volumes/67/wr/mm6740a4.htm?s_cid=mm6740a4_w) (noting that “[u]nvaccinated children . . . were disproportionately uninsured” and that “lack of access to health care or health insurance might be factors” explaining why children were not vaccinated) (last visited Dec. 10, 2018); Gavi, the Vaccine Alliance, *Vaccine-Preventable Disease Outbreaks*, <http://www.vaccineswork.org/vaccine-preventable-disease-outbreaks/> (last visited Dec. 10, 2018).

<sup>25</sup> Flavin, *et al.*, *Immigrants Use Little Health Care, May Help Subsidize Care of Non-Immigrants: Harvard/Tufts Researchers*, Physicians for a National Health Program (Aug. 8, 2018), <http://www.pnhp.org/news/2018/august/immigrants-use-little-health-care-may-help-subsidize-care-of-non-immigrants-harvard> (last visited Dec. 10, 2018).

<sup>26</sup> Washington Post, *Read the Trump administration’s draft proposal penalizing immigrants who accept almost any public benefit*, at 186,

of public benefits by United States citizen children as a factor in a non-citizen parent's public-charge assessment, the potential for family disruption by the Proposed Rule remains because it still threatens to penalize children for even minimal use of government benefits to which they are legally entitled.

Under the Proposed Rule, a non-citizen immigrant child's use of a public benefit would count towards the child's own public charge determination.<sup>27</sup> The Proposed Rule will force many parents to reconsider seeking or maintaining important public benefits for their children to avoid a later determination that their child is likely to become a public charge. Parents may choose to forgo benefits that provide healthcare coverage, housing, or food, and children, in turn, may attend school sick, hungry, or without other basic needs required for learning. In this way, the Proposed Rule also would undercut State policies that are based on believing in and investing in their youngest residents. Inherent in our States' values is the idea that, with the right education and resources, all children have potential for future success. The idea that the Department would brand a child "likely to become a public charge" for not yet being economically self-sufficient—a wholly irrational expectation for any child, native-born or immigrant—undercuts these important values.

For these same reasons, the Department should not include the use of CHIP in the Department's public charge determinations. Including CHIP in the public charge inadmissibility analysis would harm families by discouraging enrollment in that critically important program.

CHIP helps working families that do not qualify for Medicaid by making healthcare affordable for children and pregnant women, offering benefits such as vaccinations, tests and X-rays, prenatal care, and regular wellness checkups.<sup>28</sup> A

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<https://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/> (last visited Dec. 10, 2018).

<sup>27</sup> 83 Fed. Reg. 51,180.

<sup>28</sup> FAMIS MOMS Member Handbook (Jan. 2015), <http://www.coverva.org/mat/FAMIS%20MOMS%20Handbook%20English.pdf> (The federal CHIP program is administered in Virginia under the program name Family Access to Medical Insurance Security (FAMIS)) (last visited Dec. 10, 2018). In State fiscal year 2018, Virginia's CHIP program alone provided services to more than 200,000 pregnant women and children. *Recipients by Eligibility Category*, Virginia Medicaid and CHIP Data Book 2018, 106, <http://www.dmas.virginia.gov/#/deidentifiedreports> (last visited Dec. 10, 2018). In fiscal year 2017, approximately 1,760,638 Illinois children enrolled in CHIP or Medicaid. *Unduplicated Number of Children Ever Enrolled in CHIP and Medicaid*, <https://www.medicaid.gov/chip/downloads/fy-2017-childrens-enrollment-report.pdf> (last visited Dec. 10, 2018). As of September 2018, approximately 6,508,169 New Yorkers were enrolled in CHIP and Medicaid. *Medicaid & CHIP in New York*,

strong CHIP program benefits families and the States.<sup>29</sup> Pregnant women, infants, and children who lack sufficient healthcare face a substantially elevated risk for developing serious medical conditions.<sup>30</sup> If left untreated, such medical conditions can cause lifelong or even life-threatening harms.<sup>31</sup> Nor are such harms limited to the person who directly experiences them. Rather, by keeping a parent out of work to care for a family member or diverting income away from basic needs towards healthcare, an untreated medical condition can become economically devastating for an entire family. For all those reasons, CHIP's promise of low-cost regular and preventive healthcare helps families build a strong foundation for self-sufficiency.

If the Final Rule swept CHIP into the public charge determination, the program would become a potential liability for many immigrant families. Eligible immigrant families of modest means could be forced to choose between healthcare and immigration status. And families who prioritize immigration status would risk harming the long-term health of their children, depleting their finances with high medical bills, and relying on frequent emergency room visits at State expense.

### **c. The Proposed Rule discriminates against people with disabilities**

The Proposed Rule acknowledges the existence of federal programs that “provide further protections for individuals with disabilities to better ensure that such individuals have the opportunity to make[] contributions” to society.<sup>32</sup> Federal and state governments have long recognized that many people with disabilities

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<https://www.medicaid.gov/state-overviews/stateprofile.html?state=new-york> (last visited Dec. 10, 2018).

<sup>29</sup> Lindsey Leininger and Helen Levy, *Child Health and Access to Medical Care*, *Future Child*. 2015 Spring 25(1) at 65–90, <https://www.ncbi.nlm.nih.gov/pubmed/27516723> (last visited Dec. 10, 2018); Julia Paradise, *The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?*, Kaiser Family Foundation (Jul. 17, 2014), <https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/> (last visited Dec. 10, 2018).

<sup>30</sup> National Institutes of Health, *What is prenatal care and why is it important?*, <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/prenatal-care> (last visited Dec. 10, 2018); see generally Gruber *et al.*, *The Great Equalizer: Health Care Access and Infant Mortality in Thailand*, *Am Econ J Appl Econ*. 2014 Jan 1; 6(1): 91-107, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3998713/>.

<sup>31</sup> See generally National WIC Association, *Press Release: National WIC Association Opposes Public Charge Rule Targeting Nutrition Assistance and Health Access for Immigrant Families* <https://www.nwica.org/blog/press-release-national-wic-association-opposes-public-charge-rule-targeting-nutrition-assistance-and-health-access-for-immigrant-families#.XAmkLdtKiUk> (September 23, 2018).

<sup>32</sup> 83 Fed. Reg. 51,184.

have the ability to work and contribute to the economy in the same manner as their non-disabled counterparts. Because the nation benefits from the inclusion of people with disabilities in the workforce, federal and state governments have opted to provide certain accommodations and assistance to people with disabilities to facilitate their ability to enter and remain in the workforce and to level the playing field to make daily life accessible to people with disabilities.

Medicaid is one of many government programs that provide targeted assistance to individuals with disabilities. For example, New York created a Medicaid Buy-In Program for Working People with Disabilities specifically to allow working people with disabilities to earn more income without risk of losing their health insurance. Many people qualify for Medicaid because an injury or disability has made them unable to work.<sup>33</sup> Medicaid often covers services that are unavailable through private insurance, such as medical equipment, long-term care, and certain specialist care services. But the Proposed Rule undermines the goals of these programs by broadly including “health” as a factor in the public charge determination and by heavily weighting receipt of health-related benefits as a negative factor in public charge determinations without distinguishing Medicaid recipients with disabilities.

By disfavoring people with disabilities in the public charge analysis, the States will be harmed in two ways. First, people with disabilities who contribute to the States’ economies may be deemed, inappropriately, public charges. Second, States will be harmed by the likely chilling effect the Proposed Rule will have on people with disabilities who forgo Medicaid to avoid being deemed public charges or who forgo other programs out of a fear (even if unfounded in the regulations) that they will be deemed public charges by participating in such programs.

#### **d. The Proposed Rule discriminates against non-English speakers**

Recent Census data indicate that more than 350 different languages are spoken in the United States.<sup>34</sup> Nearly 700,000 non-English speakers live in New

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<sup>33</sup> In State Fiscal Year 2018, Virginia had 183,361 blind or disabled enrollees. Recipients by Eligibility Category, Virginia Medicaid & CHIP Data Book 2018, 106, <http://dmas.virginia.gov/#/deidentifiedreports> (last visited Dec. 10, 2018). During Fiscal Year 2017–2018, New York had 688,000 Medicaid enrollees who were blind or disabled. *7 Million and Counting: More New Yorkers Benefit from State Health Coverage*, Office of the New York State Comptroller at 19 (Sept. 2018), <https://osc.state.ny.us/reports/health/state-health-coverage.pdf> (last visited Dec. 10, 2018).

<sup>34</sup> U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 years and Over: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (More than 60 million respondents reported speaking a language other than

Mexico. In Virginia, more than 1.1 million residents speak a language other than English. New York boasts nearly 5.5 million such residents, and California is home to more than 15.3 million.<sup>35</sup> Against that backdrop, the Proposed Rule takes the unprecedented step of proposing to require the Department to assess an immigrant's English proficiency in admissibility determinations.<sup>36</sup> In support, the Proposed Rule points to an apparent correlation between English language proficiency and public benefit participation in a 2013 study, most of which consists of data that are "considered unreliable due to a high relative standard error."<sup>37</sup> Nonetheless, the data demonstrate that use of cash benefits by immigrant populations that are not English-proficient is so low as to be within the study's margin of error. Indeed, many immigrants with limited English proficiency are taxpaying business owners, or work in white collar or blue collar jobs.

Discrimination on the basis of English proficiency finds no support in the relevant statutes, the 1999 Guidance, or any other relevant source.<sup>38</sup> Although lack of English-speaking skills may be a hindrance to obtaining certain employment, proficiency in a foreign language may bolster an immigrant's ability to obtain other employment. The Proposed Rule fails to consider these realities.<sup>39</sup>

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English at home, and more than 25 million reported speaking English at a level "less than 'Very Well.'" (last visited Dec. 10, 2018).

<sup>35</sup> *Id.*

<sup>36</sup> 83 Fed. Reg. 51,196.

<sup>37</sup> *Id.* The other studies cited in the Proposed Rule on this point either (i) concern only men and are based on nearly 30-year-old census data, (ii) are based on data from European countries rather than the United States, or (iii) have never been published in peer-reviewed journals.

<sup>38</sup> Indeed, state and federal law prohibits discrimination on the basis of language proficiency. *See, e.g.*, NMSA 1978 § 28-1-7 (New Mexico's general prohibition on national origin discrimination); VA Code Ann. § 15.2-1604 (Virginia's prohibition on national origin discrimination in government employment); Cal. Govt. Code § 12955 (California's prohibition on national origin discrimination in housing); NY Exec L § 296 (New York's prohibition on national origin discrimination in employment); Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000) (Federal requirement that federal agencies "develop and implement a system by which [limited English proficiency] persons can meaningfully access . . . services").

<sup>39</sup> As one illustration, in New York several immigrants have created successful multi-million dollar businesses, despite having limited English proficiency. *See Moving to U.S. and Amassing a Fortune, No English Needed*, Kirk Semple, N.Y. Times (Nov. 8, 2011), <https://www.nytimes.com/2011/11/09/nyregion/immigrant-entrepreneurs-succeed-without-english.html> (last visited Dec. 10, 2018).

**II. The Department should not include additional “unenumerated” benefits and, even as drafted, the States are concerned about the chilling effect the Proposed Rule will have on immigrant access to important State-funded benefits**

The Department has requested comments on whether a person’s “receipt of benefits other than those proposed to be included in this rule as public benefits should nonetheless be considered in the totality of circumstances, either above the thresholds set forth in the proposed rule for public monetizable and non-monetizable public benefits, or at some other threshold.”<sup>40</sup> The States strongly oppose any effort to include other public benefits—monetizable or non-monetizable—in the public charge analysis than those currently included under the 1999 Guidance. The States are concerned that including other “unenumerated” benefits in the public charge analysis would impact important programs funded by the States or by the Federal and State governments together.

But even in its current form, the Proposed Rule increases the likelihood that immigrants will be chilled from accessing public assistance programs regardless of whether they are included in a final rule. Indeed, following release of a previous draft of the Proposed Rule, individuals and families dropped out in noticeable numbers from support programs that are not included in the Proposed Rule and that may never be part of a final rule. For example, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), a federal nutrition program aimed at helping pregnant women and children, saw a significant drop in immigrant enrollment.<sup>41</sup> Even if no additional programs are added to the public charge test for admissibility, many immigrants may not be able to effectively differentiate between the programs that are included and those State-funded programs that are excluded. The public charge inadmissibility formula in the Proposed Rule is already complex and layered, making it difficult to understand. Thus, many immigrants who fall into categories that are exempt from the public charge inadmissibility determination may nevertheless forgo needed benefits,

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<sup>40</sup> *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,173.

<sup>41</sup> Helena Bottemiller 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>. Moreover, the drop in immigrant enrollment following prior revisions to the public charge rule in the late 1990s also suggests a likely drop in Medicaid enrollment should the Proposed Rule take effect. See Dara Lind, *Trump is Proposing a Regulation that Could Change the Face of Legal Immigration—by Restricting Low-Income Immigrants*, Vox (Sept. 24, 2018), <https://www.vox.com/2018/9/24/17892350/public-charge-immigration-food-stamps-medicaid-trump>.

including benefits that are not included in the Proposed Rule, simply out of misunderstanding of the rule and fear of its application.<sup>42</sup>

The States have chosen to provide, and encourage use of, public assistance programs to increase the quality of life of their residents and to help people who are working, paying taxes, and making significant contributions to the States' economies. In offering these programs, the States recognize that the public welfare of their citizenry is better served by ensuring that as many people as possible have access to essential services, such as affordable healthcare and childcare. Rather than create a burden on the States or taxpayers, these programs create opportunities for more individuals to enter and remain in the workforce and bolster the States' economies. For example, the States offer subsidized childcare for parents who work or attend school.<sup>43</sup> The States also offer programs to help meet basic household and personal needs<sup>44</sup> and programs to care for loved ones.<sup>45</sup>

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<sup>42</sup> Henry J. Kaiser Family Foundation, *Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage* (Sept. 24, 2018) ("The proposed rule would likely increase confusion and fear among all legal immigrant families about using public programs for themselves and their children, regardless of whether they are directly affected by the policy changes.").

<sup>43</sup> See *Paying for Child Care*, Va. Dep't. of Social Servs., <http://www.dss.virginia.gov/cc/parents/index.html?pageID=4> (Virginia's Child Care Subsidy Program helps families pay the cost of childcare so that parents can work or attend school) (last visited Dec. 10, 2018); *Child Care Assistance Program Eligibility / How to Apply?*, Ill. Dep't of Human Servs., <http://www.dhs.state.il.us/page.aspx?item=104995> (Illinois's Child Care Assistance Program provides low-income families, such as teen parents enrolled in school, with access to affordable, high-quality child care in center-based or home settings) (last visited Dec. 10, 2018); Massachusetts Department of Early Education and Care, *2017 Annual Report to the Legislature* <https://www.mass.gov/files/documents/2018/02/21/2017%20EEC%20Annual%20Report%20FINAL%202%2015%202018%20webcopy.pdf> (Massachusetts Department of Early Education and Care supported an average of 54,000 children per day through childcare subsidies in 2017) (last visited Dec. 10, 2018).

<sup>44</sup> See, e.g., *Energy Assistance Manual*, Vol. X, Chapter A, 1, Va. Dep't. of Social Servs., <http://www.dss.virginia.gov/benefit/ea/> (Virginia's Energy Assistance Program helps meet the costs of home energy—including fuel assistance for home heating, assistance in acquiring or repairing cooling equipment, assistance with electric bills, and emergency assistance) (last visited Dec. 10, 2018); N.M. Human Services Department Low Income Home Energy Assistance Program 2017 fact sheet (Jan. 27, 2017), [http://www.hsd.state.nm.us/uploads/FileLinks/f13cd6ab72d244089c5bf80111f07524/Low\\_Income\\_Home\\_Energy\\_Assistance\\_Program\\_LIHEAP\\_Fact\\_Sheet\\_2017.pdf](http://www.hsd.state.nm.us/uploads/FileLinks/f13cd6ab72d244089c5bf80111f07524/Low_Income_Home_Energy_Assistance_Program_LIHEAP_Fact_Sheet_2017.pdf) (New Mexico's Low Income Heating Energy Assistance Program directed funds to families facing extreme heat or cold in 2017) (last visited Dec. 10, 2018); Illinois Low Income Home Energy Assistance Program, [Benefits.gov](https://www.benefits.gov/benefit/1556), <https://www.benefits.gov/benefit/1556> (numerous Illinoisans receive aid through the Low-Income Home Energy Assistance Program (LIHEAP), which is funded jointly by the State of Illinois and the U.S. Department of Health and Human Services and provides low-income households with financial help to pay for winter energy services) (last visited Dec. 10, 2018); see also Weatherization

Use of these state programs does not, without more, mean recipients are not “self-sufficient.” The fact that people choose to participate in a program voluntarily offered to them by the government should not be used to brand them as people whose entire welfare is likely to become chargeable to the public. Many “unenumerated” programs are designed to assist self-sufficient people survive discrete difficulties. The States object to the inclusion of any of the newly designated public benefits in the Proposed Rule, and firmly oppose the inclusion of any additional “unenumerated” benefits. The fear of jeopardizing one’s own immigration status or the immigration status of their children, whether founded or unfounded, will have a chilling effect on immigrants’ use of important State-funded benefits they are otherwise entitled to receive. Anything short of a clear statement that the Department *will not* consider an immigrant’s receipt of such State benefits as part of the public charge analysis risks disincentivizing enrollment and, in turn, stymieing an immigrant’s ability to provide for his or her self and family.

### III. The Proposed Rule violates federal law

Under prior agency interpretation, the term “public charge” referred to those who are primarily dependent on government assistance.<sup>46</sup> In so doing, it reflected a legislative choice to disfavor immigration by those whose livelihood depends primarily on the largesse of taxpayers due to an inability or unwillingness to work. The Proposed Rule, however, flips that understanding on its head. The new definition of a public charge would encompass individuals who receive even minimal and temporary government assistance—including Medicaid, Medicare Part D Low Income Subsidies, SNAP, subsidized housing, and potentially CHIP.

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Assistance Program, Va. Dep’t. of Housing and Community Dev., <http://www.dhcd.virginia.gov/index.php/housing-programs-and-assistance/homeowner-and-homebuyer-assistance/homeowner-assistance/73-weatherization.html> (Virginia program that offers home repairs and improvements to reduce energy costs for low-income households) (last visited Dec. 10, 2018); NJ Div. of Disability Services, Personal Assistance Services Program, <https://www.state.nj.us/humanservices/dds/services/pasp/> (New Jersey’s Personal Assistance Services Program (PASP) provides permanently disabled adults with a cash allowance to hire personal assistants who enable recipients to work, attend school, volunteer in the community, and maintain their independence) (last visited Dec. 10, 2018).

<sup>45</sup> See New Jersey Dep’t. of Labor and Workforce Dev., Family Leave Insurance Workload in 2016 Summary Report (Aug. 2017) [https://www.nj.gov/labor/forms\\_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf](https://www.nj.gov/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf) (New Jersey’s State-funded Family Leave Insurance program offers cash assistance to working individuals who need time to bond with a newborn or adopted child or who are caring for a family member with a serious health condition) (last visited Dec. 10, 2018).

<sup>46</sup> *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,677 (May 26, 1999).

In the Proposed Rule, the Department seeks to radically expand the longstanding definition of “public charge” in numerous respects. Rather than determining whether a person is likely to become “primarily dependent” on cash benefits, the Department proposes to engage in a public charge analysis whenever a person receives public benefits or cash subsidies in excess of fifteen percent of the FPG for a household of one within any period of twelve consecutive months or certain non-monetary benefits for more than a twelve-month period. Fifteen percent of the FPG does not remotely represent “primary dependence on the government”; the Proposed Rule does away with the settled “primary dependence” standard by stating flatly that “a person should be considered a public charge based on the receipt of financial support from the general public through government funding (*i.e.*, public benefits).”<sup>47</sup> As the Proposed Rule notes, a public charge determination would be made based on the receipt of benefits totaling \$150 per month in value.<sup>48</sup> That is no small shift. That shift would mean that many hard-working, self-sufficient immigrants who experience a fleeting financial hardship for one year or more may lose their opportunity for long-term residence in the United States. Indeed, if it were to be applied to the United States as a whole, the Proposed Rule’s definition is so broad that it would encompass a large portion of the current population.<sup>49</sup>

Rather than disfavoring immigrants primarily dependent on government cash-assistance, the Proposed Rule favors wealthy immigrants, thus undermining the long-held belief that the United States welcomes modest yet hardworking immigrants seeking to fulfill the American dream.

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<sup>47</sup> *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,158.

<sup>48</sup> *Id.* at 51,164.

<sup>49</sup> Migration Policy Institute, *MPI National and State-Level Estimates of Children in Benefits-Receiving Families, by U.S. Citizenship Status of the Child* (2018), <http://www.migrationpolicy.org/sites/default/files/datahub/PublicCharge-StateEstimates-Children.xlsx> (last visited Dec. 10, 2018). In Pennsylvania, for example, the median household income is \$7,000 less than the Proposed Rule’s threshold of 250% of the FPG. United States Census Bureau, *QuickFacts—Pennsylvania*, <https://www.census.gov/quickfacts/fact/table/pa/INC110216#viewtop> (last visited Dec. 10, 2018). Of the 384,654 Pennsylvanians living in immigrant families making less than 250% of the FPG, only a tiny fraction (less than 5%) receive a cash assistance benefit. PA Dept. of Human Services; data on file with Community Legal Services. The Proposed Rule thus places the Commonwealth’s other 366,000 immigrant families at risk of a negative public charge determination by expanding the universe of benefits that may be considered.

**a. The Proposed Rule lacks reasoned analysis supporting its drastic changes to longstanding policy**

When an agency changes a longstanding policy, it must support its decision with a “reasoned analysis.”<sup>50</sup> The agency must “show that there are good reasons for the new policy.”<sup>51</sup> In particular, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”<sup>52</sup> For nearly two decades, the Department defined “public charge” to mean primary dependence on public funds, more specifically, cash benefits or institutionalization at government expense.<sup>53</sup> The Proposed Rule represents a significant change in longstanding policy that is unsupported by any reasoned explanation.

As an initial matter, the Proposed Rule fails to lay out a well-supported explanation about why the prior standard was insufficient and why such a substantial overhaul is necessary in the first instance. The Department’s stated reasoning—that it is conforming the Proposed Rule to case law—withers under even a modicum of scrutiny. The two forty-plus-year old cases<sup>54</sup> the Proposed Rule repeatedly seeks to “conform” to both involved the receipt of cash benefits by elderly, unemployed, and unsponsored applicants. Neither case has any relevance to the broader immigrant population affected by the Proposed Rule.

Further, the Proposed Rule reverses longstanding Department policy and is opposed by numerous reputable organizations, including the National Immigration Law Center, the Legal Aid Society, and the National WIC Association. The Department offers no basis for its use of fifteen percent as the relevant benchmark for who is a “public charge.” The Department’s own conclusory assumption that receipt of this level of funding represents a lack of self-sufficiency is rebutted by ample research suggesting that immigrants pay more into the United States healthcare system than they take out,<sup>55</sup> and most working immigrants pay taxes. Worse still, the Proposed Rule gives little guidance as to how Department officials

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<sup>50</sup> *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

<sup>51</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016).

<sup>52</sup> *Id.*

<sup>53</sup> *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676 (May 26, 1999).

<sup>54</sup> *Matter of Vindman*, 16 I&N Dec. 131 (Reg’l Comm’r 1977), and *Matter of Harutunian*, 14 I&N Dec. 583 (Reg’l Comm’r 1974).

<sup>55</sup> *Immigrants Use Little Health Care, May Help Subsidize Care of Non-Immigrants: Harvard/Tufts Researchers*, Physicians for a National Health Program (Aug. 8, 2018), <http://www.pnhp.org/news/2018/august/immigrants-use-little-health-care-may-help-subsidize-care-of-non-immigrants-harvard> (last visited Dec. 10, 2018).

will go about predicting a person's future likelihood of receiving the requisite cash benefits or public subsidies. Moreover, the use of specific dollar benchmarks belies the Department's assurances that it will not consider prior receipt of benefits to be the dispositive factor in public charge determinations. The lack of reasoned explanation underlying the Proposed Rule suggests that the changes to the public charge standard may arise from animus towards immigrants and may be intended to create fear within the immigrant community.<sup>56</sup>

The Department also fails to offer a reasoned explanation for its proposed unprecedented expansion of non-monetizable public benefits to be included in admissibility determinations. The Proposed Rule creates a clear regulatory disincentive from accessing benefits Congress explicitly made available to them. Thus, the Proposed Rule appears to be at odds with congressional intent. By its own language, the Proposed Rule is also at odds with the recommendations of the very agencies that administer the federal programs at issue. As the Proposed Rule points out, INS consulted with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and the Department of Agriculture (USDA) when developing the May 1999 guidance.<sup>57</sup> The very federal agencies responsible for administering these public programs told INS unequivocally that “the *best evidence* of whether an individual is relying primarily on the government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at government expense.”<sup>58</sup> Further, they advised that “neither the receipt of food stamps nor nutrition assistance provided under [SNAP] should be considered in making a public charge determination.”<sup>59</sup> The Proposed Rule dismisses all of this expertise, stating *ipse dixit* that such input from the federal agencies that actually administer these programs “d[oes] not foreclose [the Department] adopting a different definition consistent with statutory authority.”<sup>60</sup> But that response is legally insufficient—it confuses the Department's ability to take action under a statute with its independent obligation to adopt an approach based on sound reasoning. And on that issue, merely asserting that the

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<sup>56</sup> See, e.g., Ted Hesson, *et al.*, *Immigrants may be denied green cards if they've received benefits*, Politico (Sept. 22, 2018), <https://www.politico.com/story/2018/09/22/poor-immigrants-green-cards-trump-836456> (“Media reports earlier this year about the Trump administration's plans to issue the proposed rule fueled anxiety and misinformation in immigrant communities, local health providers say. Even without a change in policy, immigrants are already turning down government subsidies to help them buy staple foods and infant formula for fear that it could bar them from receiving a green card.”).

<sup>57</sup> *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,133.

<sup>58</sup> *Id.* (emphasis added).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Department has the ability to reject other agencies' reasoned analyses (whether or not correct) does nothing to justify its choice to do so. That response—like the Department's overall decision—plainly flunks the APA's requirements.

This dramatic lowering of the “public charge” threshold means that almost any non-wealthy immigrant could fall within its reach, especially because of the prospective nature of the inquiry. Because the Department must determine whether a person is “likely” to become a public charge in the future—not whether she is currently a public charge today—even immigrants who have never received government assistance may be penalized by the Proposed Rule if it seems probable to the Department that they might need temporary public assistance at some point in the future. In fact, the Proposed Rule's income thresholds suggest that potential applicants who work full time and receive no public benefits at all would be considered likely to become public charges unless they earn more than 125% of the FPG. By drastically reducing the amount of likely governmental reliance the Department must show in order to make a finding that someone would likely be a public charge, the Proposed Rule would open the floodgates to wholly arbitrary decisionmaking on an issue of fundamental importance.

The Proposed Rule's unexplained and drastic increase in public charge bond amounts is similarly problematic. First, the Proposed Rule points out repeatedly that since affidavits of support became legally enforceable in 1996, public charge bonds are rarely used.<sup>61</sup> The Proposed Rule does not, however, explain why this rarely-used mechanism for admitting an otherwise inadmissible immigrant should now be not just modified, but increased *tenfold*. As to the significant increase itself, the Department explains that the previous amount was promulgated in 1964 and “has not been updated and inflation has never been accounted to represent present dollar values.”<sup>62</sup> The Proposed Rule then inexplicably points out that if the 1964 amount were adjusted to 2018 dollars, the bond would be nearly 20% less than the proposed \$10,000 threshold. No reason is given to explain this discrepancy, nor does the Department explain why \$10,000 is, without exception and across the board, considered a “suitable and proper bond” in all instances as dictated by statute.<sup>63</sup>

The Department's governing statute requires it to consider five central factors as part of the public charge analysis—age, health, family status, financial status, and education—when making a public charge determination.<sup>64</sup> The

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<sup>61</sup> *Id.* at 51,219.

<sup>62</sup> *Id.* at 51,221.

<sup>63</sup> 8 U.S.C. § 1183.

<sup>64</sup> *See* 8 U.S.C. § 1182(a)(4) (indicating that “the consular officer or the Attorney General shall at a minimum consider” these five factors).

Department “may also consider” any affidavit of support.<sup>65</sup> The statute does not give the Department free rein to create an entirely new public charge regime that penalizes temporary use of government programs, nor does the statute grant the Department the autonomy to decide which factor it should weigh more heavily than others. The creation of an entirely new public charge regime that is not rooted in the language of the enabling statute is an arbitrary use of agency discretion.

Finally, the Proposed Rule fails to provide the necessary specificity to give appropriate notice to those it regulates. As discussed above, the Proposed Rule’s lack of clarity and will likely chill access to all available programs by immigrants seeking temporary help in hard times, as well as to the programs specifically enumerated in the Proposed Rule. The Proposed Rule would likely cause the States’ residents to forgo unenumerated State-funded benefits to avoid the risk of being deemed a public charge. Such a result would seriously undercut the success of the States’ programs. The Proposed Rule’s natural outcome will be that eligible immigrants will forgo the enumerated nutrition, housing, and healthcare benefits, and will be afraid to access unenumerated State-funded benefits as well. The States are concerned that the Proposed Rule would lead to an increase in hungry children, homeless residents, and increased healthcare costs that will ultimately be paid for by the States and their residents.

Where a proposed rule offers only “vague and unenforceable limits,” it is arbitrary.<sup>66</sup> The Proposed Rule does not provide clear guidance to those who seek to conform their conduct to the Rule’s requirements. Without clear notice on this issue of exceptional importance to those potentially affected, the Proposed Rule is arbitrary.

**b. The Proposed Rule does not conform to executive branch policy for promulgating regulations**

Besides violating the APA, the Proposed Rule also violates Executive Orders governing the issuance of new regulations. Most obviously, the Department did not conduct an adequate analysis of either the Proposed Rule’s federalism implications or its economic impact. Because of the serious impact the Proposed Rule will have on the States, it is improper for the Department to forgo the federalism summary impact statement.

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<sup>65</sup> *Id.*

<sup>66</sup> *Sierra Club v. Dep’t of Interior*, 899 F.3d 260, 274 (4th Cir. 2018) (rejecting a “small percent” and a “majority” as appropriate species “take limits” on the grounds that the limits were vague and unenforceable).

Executive Order 13,132 requires the Department to produce a federalism summary impact statement. The Proposed Rule acknowledges that agencies generally must perform such an analysis but summarily concludes that no such analysis is necessary here because the Proposed Rule will not impose substantial, direct costs on State and local governments.<sup>67</sup> That is incorrect. In fact, the Proposed Rule will have significant impact on the States.

State and local governments enjoy significant tax revenues from immigrant populations.<sup>68</sup> Between 2011 and 2013, these revenues were \$130 billion higher than public money spent on that same population.<sup>69</sup> Nationwide, immigrant populations pay \$900 more per individual on average in tax revenue than they collect in public expenditures.<sup>70</sup> Thus, any chilling effect the Proposed Rule may have on immigration will have serious negative consequences for those States that rely on tax revenue from their immigrant populations.

Further, research suggests that for every dollar of federal aid, States often generate more than that dollar in economic activity.<sup>71</sup> Because the Proposed Rule will result in fewer immigrants accessing aid they are otherwise qualified to receive, States will see less of that economic activity generated. In States with high immigrant populations, this effect will likely be exacerbated, and will compound other harms to State coffers (e.g., smaller tax base, increased State funds needed to pay for emergency services because preventive medical care is considered a public benefit under the Proposed Rule, etc.). In Pennsylvania alone, the Commonwealth estimates this loss of federal money will reduce Pennsylvania's total economic activity by more than half-a-billion dollars.<sup>72</sup>

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<sup>67</sup> 83 Fed. Reg. 51,276

<sup>68</sup> National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, 518–19 (2017), <https://www.nap.edu/read/23550/chapter/14#518> (last visited Dec. 10, 2018).

<sup>69</sup> *Id.* at 522.

<sup>70</sup> *Id.* at 524.

<sup>71</sup> *See, e.g.*, Center on Budget and Policy Priorities, *New Mexico Supplemental Nutrition Assistance Program Fact Sheet* (March 14, 2018), [https://www.cbpp.org/sites/default/files/atoms/files/snap\\_factsheet\\_new\\_mexico.pdf](https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_new_mexico.pdf) (Moody's Analytics estimates that in a weak economy, \$1 in SNAP benefits generates \$1.70 in economic activity) (last visited Dec. 10, 2018).

<sup>72</sup> Calculations based on data from various sources including the Pennsylvania Department of Human Services, Pennsylvania Community Legal Services, the U.S. Department of Health and Human Services, the Fiscal Policy Institute, the U.S. Department of Agriculture, and the U.S. Social Security Administration.

The Proposed Rule also does not include an accurate economic impact statement. Executive Orders 12,866 and 13,563 require agencies to “assess *all costs* and benefits of available regulatory alternatives”<sup>73</sup> and, if regulation is necessary, to “select . . . approaches that maximize net benefits.”<sup>74</sup> The Proposed Rule does not properly analyze the harms of the Proposed Rule, particularly, the harms that States and their residents will face should immigrants living within their borders forgo the enumerated and unenumerated benefits. Moreover, the Proposed Rule’s prioritizing immigrants with the funds to forgo government assistance or pay the bond set forth in the Proposed Rule entirely disregards the States’ needs for immigration—the rule contains no analysis showing that current employment needs are better met by prioritizing high-income immigrants. In fact, many of the fields that do not have sufficient employees are lower-paying fields that will not likely be filled by the high-income or wealthy foreigners whose immigration the Proposed Rule is designed to facilitate.<sup>75</sup> A thorough economic impact analysis should be done to address these issues.

#### IV. Conclusion

If finalized, the Proposed Rule will harm the States and their residents. The proposed expansion of “public charge” suggests that the United States is no longer a land of opportunity that welcomes ambitious but modest earners. The Proposed Rule infringes on fundamental rights, is contrary to law, and is the result of an arbitrary and capricious change in longstanding policy. It is bad law and worse policy. We strenuously object to the Proposed Rule and respectfully request its withdrawal.

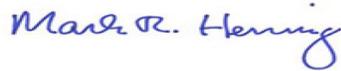
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<sup>73</sup> Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993) (emphasis added).

<sup>74</sup> Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

<sup>75</sup> See, e.g., Editorial Board, *U.S. Farms Can’t Compete Without Foreign Workers*, Bloomberg (Jun. 1, 2018), <https://www.bloomberg.com/view/articles/2018-06-01/u-s-farms-need-more-immigrant-workers> (describing the need for immigrants in the agricultural workforce).

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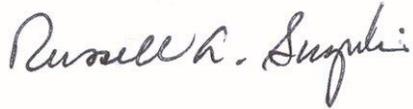
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