

December 3, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington D.C. 20528

RE: RIN 1615-AA22 “Inadmissibility on Public Charge Grounds”

Dear Secretary Nielsen:

Thank you for the opportunity to comment on the Department of Homeland Security’s (DHS’s) proposed “public charge” rules published on October 10, 2018.

As public health, medicine, nursing and public policy scholars and practitioners, we are deeply concerned about the rule’s potential harmful effects on immigrants and their families, on broader communities including citizens, on health care and social service facilities, on the US economy, and on our system of justice and civil rights. As scholars we are also concerned about the lack of evidence for the proposed policies, which suggests that they are arbitrary in nature.

For ease of comment analysis, we enumerate our comments below, first providing general comments and then offering comments on specific parts of the regulation.

1. **Withdraw the proposal.** Overall, we strongly urge DHS to withdraw the proposed rule. As described below, we believe it will cause substantial damage and is a serious departure from existing statutes.
2. **Provide complete analysis of comments.** If DHS ultimately decides to publish a final rule, we urge the Department to include a complete and fair analysis of the comments, which describes the total number of comments, including the number of those signing the comments, composition of commenters, relative numbers of commenters supporting and opposing the overall proposal, the volume and nature of comments regarding specific provisions, and the rationale for specific choices made by DHS in light of comments. This would provide transparency regarding the extent to which DHS considered public input in accordance with the Administrative Procedure Act.
3. **Proposal undermines existing federal and state laws.** The proposal seeks to overturn current policy, established in 1999, which had defined “public charge” in a manner consistent with existing law. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) established certain criteria to be weighed by immigration authorities using a “totality of circumstances” test. These criteria are age, health status, family status, financial status, and education and skills. IIRIRA specifically did not include receipt of public benefits as a criterion. Moreover, the Personal Responsibility and Work Opportunities Act, as amended by a number of subsequent federal laws and further clarified by numerous state laws, established a set of rules for eligibility for certain lawful immigrants to means-tested public benefits including Medicaid, the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), Supplemental

Security Income and TANF. After PRWORA, Congress broadened those eligibility rules in multiple statutes and expanded state options, particularly for children and pregnant women. Many states passed laws affirming these policies and expanding eligibility.

The proposed rules go well beyond the statutory criteria and effectively seek to overturn more recent federal and state statutory policies that explicitly authorize eligibility for lawful immigrants and instead imposes sanctions on the immigration status of those who lawfully use these benefits. In conjunction with parallel actions taken by the State Department without the benefit of public comment, the rules seek to undermine existing federal statutory rules regarding lawful immigration, including family-based immigration policies.

Because of this, we believe DHS should withdraw the rule. It is contrary to our sense of justice and civil rights that the proposed regulation would sanction lawfully admitted immigrants for lawfully using public benefits.

4. **If adopted, the rule would have serious damaging effects on public health and health care systems in the U.S.** A succinct summary of the health consequences was offered by Mitchell Katz, MD, MPH, who directs New York City’s Health and Hospitals system and previously led the health departments of Los Angeles County and San Francisco and is one of the nation’s foremost authorities on public health and health care systems: “*If enacted as proposed, this public charge provision could decrease access to medical care and worsen the health of individuals, threaten public health, and undercut the viability of the health care system.*”¹

As public health, medical and public policy experts, we concur with his assessment and this concern is at the heart of our recommendation to withdraw the proposed rule. Further discussion of the evidence supporting our concerns is addressed below.

The sanctions associated with the use of Medicaid and Medicare Part D benefits will harm access to medical care and medications, harming many, including pregnant women, children, those with disabilities and the elderly. The policies related to use of SNAP and public housing would also create serious harm, increasing hunger, food insecurity, housing instability and homelessness, which have both public health and social consequences. This rule will further compound the severe psychological stress currently felt by many immigrant communities, including Latino families and their citizen children, by recent initiatives of the administration by threatening their legal status and their ability to use public benefits to withstand hardships.² Since the harm of this rule will fall disproportionately in minority communities, it will exacerbate existing racial and ethnic health, social and economic disparities in the United States.

Contrary to assertions that immigrants have excessive use of public benefits, analyses indicate that, when low-income noncitizen immigrants receiving benefits like Medicaid or SNAP are compared to similarly poor US-born citizens, immigrants are less likely to receive benefits than the US-born

¹ Katz M, Chokshi D. The “Public Charge” Proposal and Public Health: Implications for Patients and Clinicians. *Journal of the American Medical Association*. 2018;320(20):2075-2076. Nov. 27, 2018.

² Roche K, Vaquera E, White R, Vaquera M. Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents. *Journal of Adolescent Health* 2018; 62: 525–531.

and the value of the benefits they receive are smaller.^{3 4} As a result, immigrants are already more likely to be uninsured and to have food insecurity⁵ than US-born citizens; these problem will become worse if the proposed rule is adopted.

5. **DHS underestimated the number of people harmed; revise impact analysis.** The proposed rule indicates that certain lawful immigrants could be considered public charges if they have used means-tested benefits, including monetary assistance such as TANF or SSI, and non-monetary assistance, such as Medicaid, SNAP, public housing and Medicare Part D (drug) benefits, as well as imposing a sweeping and vague “totality of circumstances” test, which includes several “negative” factors such low education, low income or limited English proficiency, which permits DHS officials to impose sanctions because of the “likely use” of being a public charge in the future. The proposal acknowledges that the rule would reduce the number of immigrants gaining permanent residency or adjusting status or who enrolled in benefit programs.

Recent independent analyses indicate that DHS has severely underestimated the negative effects of the rule. For example, the Migration Policy Institute reports that over two-thirds (69%) of recent lawful immigrants had a least one of the negative factors and almost half (43%) had two negative factors.⁶ The analysis also notes that the rule would also have a substantial effect in preventing the initial entry of massive numbers of immigrants into the U.S.

In particular, although the proposal rule only specifically refers to benefit use by the immigrant, not other members of his or her family, such as US-born citizen children, substantial experience from prior changes in immigrant benefit policies indicate that there will be “chilling effects” that not only cause large numbers of lawful immigrants to disenroll from benefit programs, but will also lead to disenrollment of other citizen members of their families. For example, the Kaiser Family Foundation estimated that between 2.1 and 4.9 million people, including citizen children, could disenroll from Medicaid or CHIP.⁷

Estimates for California, one state alone, exceed the national scope envisioned by DHS. University of California researchers have estimated that 129,000 to 301,000 people may lose Cal

³ Nowrasteh A, Orr R. Immigration and the welfare state: immigrant and native use rates and benefit levels for means-tested welfare and entitlement programs. Cato Institute Immigration Policy and Research Brief No. 6. May 10, 2018. <https://www.cato.org/publications/immigration-research-policy-brief/immigration-welfare-state-immigrant-native-use-rates>.

⁴ Ku L, Bruen B. Poor immigrants use public benefits at a lower rate than poor native-born citizens, *Economic Development Bulletin* No. 17, Washington, DC: Cato Institute. March 4, 2013
<http://www.cato.org/sites/cato.org/files/pubs/pdf/edb17.pdf>

⁵ Walsemann KM, Ro A, Gee GC. Trends in food insecurity among California residents from 2001 to 2011: Inequities at the intersection of immigration status and ethnicity. *Preventive Medicine*. 2017 Dec; 105:142-148.

⁶ Capps R, Greenberg M, Fix M, Zong J. Gauging the Impact of DHS’ Proposed Public-charge Rule on US Immigration. Migration Policy Institute. Nov. 2018.

⁷ Artiga S, Garfield R, Damico A. Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid. Kaiser Family Foundation. Oct. 2018.

Fresh (SNAP) and 317,000 to 741,000 could lose Medi-Cal (Medicaid) because of the public charge rules.⁸

If DHS issues a final rule, we urge that it revise its impact analyses in the light of independent research on the subject.

6. **The rule will disproportionately harm Hispanics and Asians, increasing racial and ethnic disparities.** Because immigrants are disproportionately minority, especially Hispanic and Asian, the proposal, which will also affect citizen children, will have the strongest harm in minority communities. This will exacerbate health, social and economic disparities in the U.S. and has grave implications for civil rights.

If DHS issues a final rule, it should provide analyses of the racial and ethnic effects and indicate what strategies will be undertaken to mitigate the disproportionate harm to minority communities.

7. **The rule fails to acknowledge collateral damage that will harm broader communities, including citizens.** Analyses by George Washington University indicate that the loss of Medicaid revenues due to disenrollment could reduce the patient care capacity of community health centers by about 300,000 to 500,000 patients. Community health centers are required to treat patients regardless of insurance or immigration status and more than 80% of patients are US-born citizens. Thus, a substantial share of those losing access to medical care would be US-born citizens.⁹

Similarly, a recent analysis examined the harmful effects of the public charge rule on the finances of safety net hospitals and found it could cause them to lose as much as \$27 billion in Medicaid revenues, which could harm the broader patient communities they serve as well as the staff they employ.¹⁰

The loss of benefits like SNAP and public housing will increase the demand for services by public and private facilities, like soup kitchens, food pantries, clinics, shelters and other facilities that serve entire communities of needy individuals and families, including citizens and non-citizens alike on limited budgets. Increased demand by low-income immigrants who previously were covered by the benefit programs will strain these public and private facilities and reduce their ability to serve both low-income citizens and immigrants.

We urge the Department to revise its impact analyses to examine spillover effects of the rule on communities, including citizens.

⁸ Ponce N, Lucia L, Shimada T. How Proposed Changes to the ‘Public Charge’ Rule Will Affect Health, Hunger and the Economy in California. UCLA Center for Health Policy Seminar. Nov. 7, 2018. <https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>

⁹ Ku L, Sharac J, Gunsalus R, Shin P, Rosenbaum S. How Could the Public Charge Proposed Rule Affect Community Health Centers? Policy Brief 55. Geiger Gibson RCHN Community Health Research Collaborative. Nov 2018. <https://publichealth.gwu.edu/sites/default/files/downloads/GGRCHN/Public%20Charge%20Brief.pdf>.

¹⁰ Mann C, Grady J, Orris A. Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule. Manatt Health. Nov. 2018. <https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ>

8. **The rule would make it harder for immigrants to become self-sufficient.** A fundamental assumption of the rule is that an immigrant who has used public benefits in the past, is poor, has low education, etc. will not become self-sufficient in the future. This assumption is contradicted by the immigrant experience in America and by substantial economic evidence. Although newly arrived immigrants tend to be poorer than similar US-born citizens, this is a transitional disadvantage. Over time and with hard work, immigrants gain experience and job skills, improve English proficiency and enrich their social capital, with the net result that immigrants' incomes tend to rise faster than the native-born and they catch up with their native-born peers.^{11 12 13 14} By threatening immigrants' ability to remain in the US legally, the rule effectively keeps immigrants from reaching their potential earnings abilities and, counterproductively, makes it harder for them to be self-sufficient. This, in turn makes it harder for immigrants to be productive members of the nation, pay taxes and undermines economic growth for the nation. Moreover, analyses indicate that those specifically targeted by the public charge rule, such as those with less than a high school education, catch up particularly quickly, matching the incomes of their native-born peers within six or seven years.¹⁵ The proposal threatens to short circuit immigrants' economic mobility by making it more difficult to stay in the country and succeed.

We urge the Department to examine analyses regarding the future impact on immigrant incomes and self-sufficiency, including a 20 to 30 year prospective timeframe, rather than simply assuming that the past predicts the future.

9. **The rule harms the US economy and will reduce economic growth.** The rule would ultimately undermine the positive contribution that immigrants bring to American economic growth.^{16 17} Threats to the ability of recent lawful immigrants to remain in the US also threaten the contributions of their children, the second generation of immigrants, who also make strong positive contributions to the economy.

Researchers at the University of California have estimated the economic impact of the public charge proposal and determined that implementation could seriously harm California's economy and employment, including a loss of 7,600 to 17,700 jobs, \$1.2 to \$2.8 billion in lost economic

¹¹ Chiswick B. The Effect of Americanization on the Earnings of Foreign-Born Men. *Journal of Political Economy* October 1978: 897–922.

¹² Duleep H, Dowhan D. Research on Immigrant Earnings. *Social Security Bulletin*. 2008; 68(1): 31-50.

¹³ Kaushal N, et al. Immigrant Employment and Earnings Growth in Canada and the USA: Evidence from Longitudinal Data. *Journal of Population Economics*. 2016; 29(4): 1249–1277

¹⁴ Borjas G, Friedberg R. Recent Trends in the Earnings of New Immigrants to the United States. National Bureau of Economic Research Working Paper 15406. Oct.2009.

¹⁵ Ku L, Pillai D. The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities. Nov. 15, 2018. Social Science Research Network. <http://ssrn.com/abstract=3285546>

¹⁶ Blau F., Mackie C, eds. *The Economic and Fiscal Effects of Immigration*. Washington, DC: National Academy Press. 2017.

¹⁷ Chassambouli A, Peri G. The Economic Effect of Immigration Policies: Analyzing and Simulating the U.S. Case. NBER Working Paper No. 25074. Sept. 2018.

output and \$65 to \$151 million in lost state/local tax revenues.¹⁸ It is important to understand that there may be broad economic effects of these changes. For example, reducing SNAP benefits means less revenue for grocery stores, food manufacturers and reduced employment for those who work at these businesses, just as the loss of Medicaid revenue will harm health facilities and lower employment.

DHS should revise its economic analyses in light of independent research.

10. **DHS acknowledges serious health, social and economic harm, but does not attempt to eliminate or mitigate the harm.** Near the end of the preamble, on page 51270, DHS acknowledges that the rule could have serious harmful consequences, including: “Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence ... Increased use of emergency rooms ... due to delayed treatment...increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated...Increases in uncompensated care...increased rates of poverty and housing instability... Reduced productivity and educational attainment.” We call DHS’s attention to a recent paper about how the change in SNAP benefits will increase the rate of child poverty.¹⁹

It is appalling that, rather than asking for comments on how to eliminate or mitigate these harms or proposing remedies to reduce the harms, DHS simply asks for advice on how to quantify these impacts.

If these rules are finalized, we urge the Trump Administration to consider and implement policies that will eliminate or mitigate the expected harm. We recognize that this may require actions by other federal agencies, such as USDA, HHS or HUD and additional appropriations. We urge DHS to consider and develop such policies, working in conjunction with other federal and state agencies and Congress, before implementing these rules. The proposed rule estimates that it could reduce federal benefit payments by \$15.9 billion over ten years. The federal government could propose how these savings could be used to help people to eliminate or reduce the harm. This would be consistent with an ethical approach to public policy.

Specific Comments

As noted before, we strongly urge withdrawal of the entire proposed rule. In addition to that overall recommendation, we note numerous deficiencies within the specifics of the proposal.

§103.6. Appeals. DHS should add a new subsection (f) that provides for an independent appeal for those determined to have breached the public charge bond.

§212.20 to 212.22. Public charge determinations. In light of the lack of a basis for the proposal, as compared to current policy and the potential for harm, we recommend striking these three sections.

In particular, we recommend striking §212.21(b)(ii) which includes non-cash benefits, such as Medicaid, SNAP, public housing benefits and Medicare Part D drug benefits.

¹⁸ Ponce, Lucia and Shimada, op cit.

¹⁹ Laird J, Santelli I, Waldfogel J, Wimer C. Forgoing Food Assistance Out of Fear: Simulating the Child Poverty Impact of a Making SNAP a Legal Liability for Immigrants. Nov. 15, 2018. <https://osf.io/preprints/socarxiv/6sgpk/>.

If DHS proceeds with a final rule, we support making public charge determinations based on benefits used by the individual immigrant, rather than benefits received by the overall household, which often includes citizen family members.

DHS sought comments on whether Children's Health Insurance Program (CHIP) benefits should be included among the list of means-tested benefits. We recommend against its inclusion both because CHIP covers health care for children and because the grant nature of the CHIP program inherently limits government expenditures for care.

If DHS proceeds with a final rule, we recommend that DHS should not broaden public benefit programs beyond those already listed in the proposal.

§212.21(b)(3). Basis of valuation. DHS should justify the basis for its rule that specifies 15% of the federal poverty guidelines as the basis for monetizable benefits and 9 months of non-monetizable benefits out of 36 months. It offers no rationale or evidence for these levels and appears arbitrary.

Moreover, monetizability implies the cash value of the benefit. Rather than treating \$100 in SNAP benefits as \$100 dollars in income, it would be more appropriate to consider the cash-equivalent value. Because SNAP benefits are not as flexible in use as cash (e.g., you cannot use SNAP benefits to pay your rent or clothe your children), economists recognize that they have more limited utility and that their cash value is less than the level of the SNAP benefit. Evidence from "black market" sales of food stamps indicates that the monetizable equivalent of \$100 in SNAP benefits is about \$50 to \$60.²⁰ An earlier economic study also found that the cash value of food stamps was about 50 percent.²¹ Given this evidence, the "monetizable" value of SNAP benefits should be discounted by 50 percent in applying this threshold. That is, rather than comparing the total value of SNAP benefits to the 15% threshold, DHS should compare half of the value of SNAP benefits received to the 15% threshold.

DHS should also conduct or commission research about the cash value equivalence for public housing benefits to use in determining a discount factor for these benefits. The economic theory of utility applies as well here.

§212.21(c). Likelihood of becoming a public charge in the future. This section is astonishingly vague as a basis for determining public charge. It defines "likely to become a public charge" as being "likely at any time in the future to receive one or more of the public benefits" and empowers DHS staff to make these determinations that can bar a person from permanent residency, adjustment of status or entry/re-entry into the US with broad discretion.

A standard definition of "likely" is "probable" which suggests that there is a 51 percent or greater probability, but the DHS language appears to suggest that DHS officials have discretion of how to make a determination, even if there is only a 1 percent chance that a person will become a public charge at any date in the future. Virtually any immigrant (and any citizen) could be considered likely to become a public charge, using such a vague definition. DHS should provide a clearer definition of "likely" as well of the time frame to be considered and provide evidence about why these are not arbitrary criteria. It should also give weight to the likelihood that a person will become self-sufficient later assuming no determination of public charge.

²⁰ Leahy M. Entrepreneurial Spirit? Behind the Sale of Food Stamps. *Law Street*. Feb. 19, 2016. <https://lawstreetmedia.com/issues/law-and-politics/entrepreneurial-spirit-sale-food-stamps/>

²¹ Whitmore L. What Are Food Stamps Worth? Working Paper #468 Princeton University Industrial Relations Section. July 2002. <http://harris.princeton.edu/pubs/pdfs/468.pdf>

Rather than providing carte blanche to DHS staff to make arbitrary decisions about when someone meets these criteria, DHS should conduct or commission research about when these criteria are met for a given individual with known characteristics both in terms of the level of likelihood (1%, 51%, 90%?) of receipt of a public benefit within an explicit time frame (5 to 10 years in the future, 10-20 years, 20-30 years?)

Similarly, DHS should conduct or commission research to estimate the probability that a given individual will become self-sufficient in the future and use information to establish clearer final rules. For example, if a given immigrant has a 5% chance of using a public benefit in the next year, but a 95% chance of becoming self-sufficient in 10 years if he or she is able to remain in the US, it makes sense to not consider this person likely to become a public charge and to let him or her attain permanent residency, in light of the high probability of future self-sufficiency and economic contributions. Without such a balance, DHS will exclude many immigrants from residency who would become self-sufficient and make significant contributions to the nation.

Without a clearer basis for these determinations, DHS enables arbitrary and capricious decision-making, including the potential use of racial or ethnic profiling.

§212.22(a). Prospective determinations. DHS calls for making a prospective determination of the likelihood of becoming a public charge based on the totality of circumstances. As above, rather than make this an arbitrary determination for an individual, we recommend that DHS conduct or contract for research about the prospective probability that an individual will be self-sufficient or not self-sufficient based on the factors noted over an extended time period. We again stress that there is substantial evidence that immigrants' incomes and circumstances improve over time. This evidence should be accumulated and published before issuance of final rules in order to avoid arbitrary actions, including the potential use of racial or ethnic profiling.

§212.22(4)(B). Assets for medical care. This subsection asks for the DHS official to determine whether an immigrant has sufficient assets to cover the costs of medical care for future treatment or institutionalization. This is vague, impossible to determine fairly and should be deleted. Anyone has a small probability of experiencing serious trauma, such as an auto accident, that may require \$100,000 or more of medical care; does this mean DHS may find a person with \$99,999 in the bank has insufficient assets? The primary way that people avoid the risks of high medical costs is through health insurance, but DHS specifically sanctions an immigrant for using Medicaid to protect against these medical costs. We recommend deletion of this subsection as arbitrary and contrary to the public good.

§212.22(d). Date for receipt of benefits. While we oppose most of this rule, we support DHS's decision that it will not consider benefits received before the effective date of the rule.

Moreover, if DHS issues a final rule we recommend delaying the date of consideration of receipt of benefits by at least one year from the effective date. That is, use of benefits would only count if they are used after 12 months from the effective date of the final rule. First of all, this would provide for a reasonable time period for public notification about the final rule. Second, certification periods for these benefits often last for 12 months and immigrants should have a reasonable transition time to make alternative accommodations. If, for example, an immigrant needs to find low-cost housing in lieu of public housing benefits, it may take a substantial time to find alternative housing arrangements.

§212.22(e), Documentation and appeal rights. DHS should add a section that specifies that DHS will provide written documentation of the public charge determination and the basis for that determination to the immigrant or his/her legal representative and a notification of the right to an

appeal by an independent party. Moreover, DHS should, upon request, provide a referral to a party that can provide legal representation to the immigrant who has been determined a public charge.

§212.23. Exemptions. While we urge withdrawal of the overall proposal, if DHS issues a final rule, we support the use of exemptions for which public charge grounds of inadmissibility will not be applied, including the exemptions for refugees or asylees. However, we believe that the exemptions proposed by DHS are too narrow. We specifically recommend adding exemptions for the following categories of individuals:

- (a) those who have applied for refugee or asylee status whose cases are pending.
- (b) children under the age of 21,
- (c) pregnant women,
- (d) those who have been subject to domestic, sexual or child abuse, including trafficking, and
- (e) those certified for benefits under the authorization of another person, such as the head of household or guardian.

As written, the exemptions for asylees and refugees appear to be based on their status at the time of admission or grant of status, but many are in a pending status for protracted periods of time and may be eligible for public benefits during that period. They should not be placed at risk for benefit use during the time that their application for refugee or asylee status was pending. Further, as written the public charge rule appears to bar adjustments in status for these people, rather than permitting a fair determination of their refugee or asylee status.

The exemptions for children, pregnant women and victims of domestic, sexual or child abuse are for humanitarian and health reasons, in particular the protection of public health of minors. We note that the children born of pregnant women in the U.S. will be US-born citizens. Policies that discourage prenatal medical care, adequate nutrition or safe housing by pregnant women will jeopardize the health of young US-born citizens. Those who have been subjects of domestic, sexual or child abuse often must separate from their original household for reasons of safety and may be enrolled in public benefits, such as Medicaid, SNAP or housing, to provide protections during this period of risk and vulnerability. Similarly, those who are victims of trafficking need protections, which may include public benefits; this should not be used against them.

In many cases, dependents are enrolled in public benefit programs under the authorization of another person, such as a head of household or a guardian. They may not have been aware that this occurred or even that they receive a benefit. They should not be penalized for an action that they did not participate in.

§212.24. Monetizable benefits. Please refer to comments above (§221.21(b)(3)) about the valuation of monetizable benefits. SNAP and public housing benefits should not be valued as proposed.

§213.1 (c)(2). Value of public charge bond. The value of the public charge bond required by DHS is unreasonably high; the rule grants latitude to DHS to set the level, with a minimum of \$10,000.

We recommend that the level of the bond be based on the value provided for monetizable benefits under §221.21, which is 15 percent of the per-month Federal Poverty Guidelines for a single person. In 2018, for example, this would equal a bond of \$151.75; this would automatically increase over time as adjusted for inflation. Given that DHS is generally speaking about poor persons, it is unduly harsh to require a bond that is set far beyond the level of benefits that would trigger a public charge determination.

§213.1(h)(4). Appeal rights. In the proposed rule, DHS denies appeal rights. We recommend that DHS provide for a right of appeal by an independent party, rather than limiting the appeal to DHS itself, as currently specified in the rule. Moreover, DHS should, upon request, provide a referral to a party that can provide legal representation to the immigrant who has been accused of a breach of the bond.

§214.1. Date for receipt of benefits. As described above, we recommend delaying the date of consideration of receipt of benefits by at least one year from the effective date of the regulation. This would provide time for adequate public notification of the policy and time for the non-immigrant to make alternative arrangements in lieu of the use of public benefits.

§248.1(a). Date for receipt of benefits. As described above, we recommend delaying the date of consideration of receipt of benefits by at least one year from the effective date. This would provide time for adequate public information and time for the non-immigrant to make alternative arrangements in lieu of the use of public benefits.

§248.1(b). Appeal rights. In the proposed rule, DHS denies appeal rights. We believe DHS should provide for a right of appeal by an independent party. Moreover, DHS should, upon request, provide a referral to a party that can provide legal representation to the person who has been denied a change in status.

Thank you for your consideration of these comments.

Signed,

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