Colorado Consumer Health Initiative

December 19, 2025

Kristi Noem, Secretary
U.S. Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

RE: DHS Docket No. USCIS-2025-0304, U.S. Citizenship and Immigration Services

Dear Secretary Noem,

The Colorado Consumer Health Initiative (CCHI) and the undersigned organizations appreciate this opportunity to respond to the Department of Homeland Security's Notice of Proposed Rulemaking to express our strong opposition to the changes regarding "public charge," published in the Federal Register on November 19, 2025. CCHI is a nonprofit, consumer-oriented, membership-based health advocacy organization that serves Coloradans whose access to health care and financial security are compromised by structural barriers, affordability, poor benefits, or unfair business practices of the health care industry.

CCHI works to ensure all residents in Colorado have equitable and affordable access to healthcare. This includes working with immigrant communities, health care providers, and community organizations to support health access and communicate about programs available to different populations. Public charge has been an area of significant concern for immigrant communities in recent years and we've seen firsthand how even rumors of changes to public charge generate harm.

CCHI strongly urges DHS to withdraw the proposed rule. We have seen how previous proposed changes to public charge have caused significant harm, and this rule and the harm it will cause goes far beyond prior iterations. This rule would remove the longstanding regulations on public charge, remove the clarity they provide, and create an arbitrary and unpredictable application of public charge without replacing the existing regulations. The clear guidelines currently in existence will not be replaced and create major uncertainty for countless families in how the public charge assessment will or will not be applied and what (if any) benefits will be considered when seeking an adjustment in their documentation status. We saw firsthand how prior proposed changes to public charge generated significant fear and reluctance or avoidance for families to apply for or receive public benefits. We saw Colorado families lose benefits for which they or a family member were eligible as they feared jeopardizing their legal immigrations status or that of a family member. This proposed rule goes far beyond previously proposed changes and creates a huge level of uncertainty for documented immigrant Americans and their families.

The NPRM itself acknowledges the proposed rule will cause significant harm throughout the nation and our communities by making U.S. citizen children sicker and poorer. This harm will extend to their family members as well.

The proposed rule specifically recognizes harms that could "include:

- Worse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment.
- Higher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated.
- Increased rates of uncompensated care, where treatments or services are not paid for by insurers or patients.
- Increased poverty, housing instability, reduced productivity, and lower educational attainment."[1]

In addition to these harms, we anticipate substantial increases in medical debt, personal bankruptcies, and financial insecurity. These impacts will substantially harm communities and our healthcare system more broadly. The proposed rule will increase the burden to hospitals, clinics, and providers as the community members they serve experience the harms of this rule, lose health benefits for which they or their family members are eligible, experience more acute or emergent health events, and suffer from worsening social determinants of health. Colorado's medical ecosystem already struggles to meet all of the needs of our communities, and this rule will only exacerbate those struggles.

This proposal threatens to undermine Colorado's and the nation's health, our healthcare systems, our economy, and will create arbitrary and unpredictable administration of immigration law. We strongly urge DHS to abandon this rule.

Below we outline the reasons in greater detail that the Department should withdraw and abandon this current proposal and instead advance policies that strengthen and clarify the ability for immigrants to sustain and support themselves and their families. Withdrawing this proposal would leave the current regulations as codified in 2022 in effect, which provide the appropriate clarity and consistency necessary for the application of our immigration laws. Should the Department instead develop an alternative rule, that rule must be open to full public notice and robust comment, along with any corresponding guidance or tools created.

It is vital the Department immediately clarify that any changes made through regulation or guidance are only forward-looking and that immigration officers must not consider any benefits received when the policy in effect would not have generated adverse immigration consequences for individuals or families for use of such benefits. This would be in keeping with the statement that was included in both the 2018 notice of proposed rulemaking and the 2019 final rule. Omitting a similar statement in this proposed rule is incredibly concerning and dangerous.

Implications of the proposed rule

[1] Department of Homeland Security, *Public Charge Ground of Inadmissibility*, November 19, 2025, 90 Federal Register 52168 (2025 NPRM). https://www.federalregister.gov/d/2025-20278/p-523.

Essentially rescinding the 2022 final rule on public charge as laid out in this proposed rule without any replacement language generates a regulatory void and a lack of clarity needed to apply the rule of law. DHS's stated intention of releasing new tools and guidance once this rule is finalized without the regulatory language to support such guidance or tools is highly likely to create an arbitrary and inconsistent application of the law in public charge assessments.

It is clear in the proposed rule the Administration wishes to reinterpret the law, rejecting the long-standing precedent that an individual can be found likely to become a public charge only if they are likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." This longstanding meaning of public charge is rooted in decades of case law, ratification of Congress, and was written into the 1999 field guidance as well as 2022 final rule. Instead, the Administration's NPRM reflects a much more exclusionary concept of public charge that would allow for arbitrary denials for virtually any reason, including the use of benefits received by many workers and documented immigrants, benefits which have longstanding precedent as not counting against an individual for public charge assessment.

The lack of clarity created by the NPRM regarding which benefits can be considered in the public charge assessment is alarming. This suggests the Administration intends to consider receipt of any type of means-tested benefits received or applied for by noncitizens at any time and for any duration, as relevant to the public charge determination. Indeed it seems the intent to even penalize non citizens for application for or receipt of any benefits even if said benefits are applied for/received by U.S. citizens or lawful permanent resident family members. This is underscored by the NPRM stating that the punitive rule adopted by the Trump administration in 2019[2] did not go far enough as it would "straitjacket" officers making the public charge assessment by placing any limits on the receipt of which benefits could be considered.

The rule unleashes great uncertainty and confusion by failing to define means-tested public benefits while simultaneously using various terms to describe programs that will be considered in a public charge assessment. This deliberately eliminates parameters without any real guidance for which benefits may be considered. All of this combines to create fear and uncertainty for immigrants and will almost assuredly discourage eligible citizens and lawfully permanent residents from seeking or accessing benefits for which they are eligible. This will make it impossible for nonprofits and community organizations like ours, state and local governments, healthcare providers, and other service providers to be unable to advise people seeking assistance.

The NPRM further seems to indicate the agency intends to expand the assessment to include family members by removing the section explicitly stating that applying for or receiving benefits on behalf of family members is not considered "receipt" of benefits. This will only exacerbate the chilling effect of the proposed rule and will reduce the use of benefits by eligible U.S. citizens and lawful permanent resident (LPR) children and pregnant persons.

[2] 2019 Final Rule.

The results, again acknowledged in the proposed rule are predictable and will be disastrous. The rule will effectively increase poverty, leave children hungry or without safe housing, cause delayed or foregone medical care, increase medical debt and financial insecurity, and ultimately cause long-lasting negative health outcomes. This will also undermine Colorado's and the U.S. health care systems, schools, communities, and our economy. However, the rule, while acknowledging these detrimental impacts of the rule, understates their scope and makes no case for the reason or need to replace the current lawful and effective regulations. It also fails to explain any benefits that would outweigh the significant widespread harm from repealing the current regulations.

This rule will fundamentally shift away from our country's historic commitment to welcoming immigrants. It will fundamentally redefine who is 'worthy' of being an American and what we look like as a country while fundamentally undermining the values of our nation's immigration system. The rule's failure to provide clear guidelines and protections against immigration officers who discriminate and its creation of an arbitrary and unpredictable process in determinations for adjustments of status is unconscionable.

I. Removing the effective and longstanding regulatory guardrails currently in place, the proposed rule expands the public charge concept beyond its historical bounds and creates uncertainty and fear.

The proposed rule would rescind the 2022 final rule on public charge as a basis of admissibility. The Department does not provide any legitimate justification for rescinding these regulations, which are both lawful, effective, longstanding, and supported by case law. The proposed rule does not offer any regulatory language to replace the current rules. Instead, DHS states that at some future date, after this rule is finalized, they will create new tools and guidance to direct USCIS officers in making public charge assessments. This leaves a dangerous gap in clarity of the regulations and application of the law. Additionally, DHS provides no indication that they intend to offer public notice or a robust opportunity to comment on those tools and guidance when they are created.

A. DHS's interpretation of public charge is an unjustified break with decades of precedent and Congressional intent

The meaning of "public charge" as used in the Immigration and Nationality Act (INA) has long been understood and repeatedly ratified by Congress, and by 100 years of legal precedent and case law. The field guidance issued in1999 reflects this longstanding meaning, explaining that public charge means an immigrant who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." The 2022 final rule reiterates this longstanding legal precedent and practice, one that DHS seeks to remove with this proposed rule.

The case law also provided guidance on the factors to be considered. Courts directed immigration officials to focus on the prospective immigrant's overall capacity, and not to put

excessive weight on temporary setbacks.[3] In 1974, an immigration court ruled that the fact that an immigrant "has been on welfare does not, by itself, establish that he or she is likely to become a public charge."[4]

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) codified the totality of circumstances test for the public charge grounds of inadmissibility, requiring immigration officials to consider five specific factors: age; health; family status; assets, resources, and financial status; and education and skills. In addition, IIRIRA added the requirement for sponsored immigrants to obtain legally enforceable affidavits of support from their sponsors and said that the consular officer or Attorney General may also consider an affidavit of support in making the public charge determination. The same year, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which imposed major restrictions on immigrant eligibility for public benefits.

Recognizing that confusion about the IIRIRA and PRWORA requirements was causing a chilling effect that was deterring immigrants from accessing benefits – for themselves or their children – in 1999, the Immigration and Naturalization Service (INS, then part of the Department of Justice (DOJ)) set out to provide additional clarity. As they explained, "according to Federal and State benefit granting agencies, this growing confusion is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases."[5]

The DOJ and INS therefore published the field guidance so that everyone would have access to the same information and would have clarity on the rules that adjudicators were directed to follow. The goal of this guidance was not to change policy, but to "alleviate confusion" and provide immigrants, immigrant-serving organizations, immigration officers, and benefit granting agencies with clear guidance on what benefits immigrants could safely access, without fear of immigration consequences.[6]

Specifically, the 1999 guidance provided reassurance that receipt of non-cash benefits, with the single exception of government support for institutionalization for long-term care, would not be considered in the public charge determination, because people did not rely on them for their primary means of support. Benefits such as health insurance, food assistance, tax credits, and child care subsidies would not be considered. The only benefits that could be considered were public cash assistance for income maintenance and long-term institutionalization at government expense.

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[3] *New York v. United States Dep't of Homeland Sec.*, Case 19-3595, 89-90, August 4, 2020 (2d Cir. 2020). https://ccrjustice.org/sites/default/files/attach/2020/08/465-1.pdf.

[4] Matter of Perez I. & N, Dec 136,137 (BIA 1974).

[5] Department of Justice, *Inadmissibility and Deportability on Public Charge Grounds,* May 26, 1999. 64 Federal Register, 28676 (1999 NPRM). https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13188.pdf. (Note: the content of this proposed rule was the same as the field guidance, but it was never finalized as a rule.)

[6] 1999 Field Guidance.

DHS claims that, in the absence of regulatory language, they will administer the policy consistent with statutory requirements and case law. Even if DHS were to follow this interpretation faithfully, the removal of the regulatory language and the clarity it provides undoubtedly will have a significant chilling effect, meaning that people who are eligible for public benefit programs would be less likely to enroll themselves or their family members in those programs. Without clear guidance that immigrants can use in making decisions and that service providers can rely on to offer advice, we will see a return to the confusion and harm that immigrants and broader communities were experiencing before the 1999 field guidance was published. As an organization that works to inform Coloradans of their rights and eligibility for different programs, under this proposed rule, we would be unable to provide information with any level of confidence for immigrant populations.

The NPRM alarmingly pays lip service to the need to respect precedent and previous policy while simultaneously signaling that the Administration intends to adopt a much more exclusionary concept of public charge. The rejection of any clear specification of which public benefits can be considered in the public charge assessment – including the statement that the punitive rule adopted by the Trump Administration in 2019 "straitjackets" officers making this assessment – suggests that the Administration intends to ignore more than 140 years of precedent and include receipt of any type of public benefit at any time for any duration by people with low incomes as relevant to the public charge determination. In the cases brought against the 2019 final rule, the courts rejected such an approach:

> *NY vs DHS*: Congress did "*not* anticipate abstention from all benefits use. . . Had Congress thought that any benefits use was incompatible with self-sufficiency, it could have said so, . . . But it did not. We are thus left with an agency justification that is unmoored from the nuanced views of Congress."[7]

Moreover, the proposed rule repeatedly emphasizes the importance of allowing immigration officers to make decisions based on their subjective opinions. But, the relevant statutory language in the INA says "in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status..."[8] So, for adjustment of status, the statute says that it's the opinion of the Attorney General, not the individual officer that should prevail. This is further evidence that the current regulations are closer to the statutory intent than the proposed rule and that removal of current regulations will lead to arbitrary, adverse, and potentially discriminatory outcomes.

The NPRM suggests that its understanding of public charge is more consistent with Congressional intent than the 1999 guidance. However, that assertion summarily ignores that Congress has made multiple changes to immigrant eligibility for benefits since the 1999 guidance was first introduced, including laws that make benefits more accessible, such as allowing immigrant children to receive Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), and giving states the option to cover immigrant children and pregnant people under the Children's Health Insurance Program (CHIP), and laws that make benefits less

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[7] *New York v. United States Dep't of Homeland Sec.*, Case 19-3595, 89-90, August 4, 2020 (2d Cir. 2020). https://ccrjustice.org/sites/default/files/attach/2020/08/465-1.pdf

[8] 8 U.S.C. § 1182(a)(4)(A).

accessible, such as the recently enacted H.R. 1 (P.L 119-21). If Congress did not agree that the longstanding interpretation of public charge was consistent with the INA or PRWORA, it has had multiple opportunities to direct DHS to act otherwise.

B. Removing the regulatory guardrails creates uncertainty and fear, and therefore harm.

1. The proposed rule provides no guidance regarding benefits that will be considered

By refusing to provide any guidance on what benefits will– and will not– be considered in a public charge assessment, the Administration is choosing to create fear and uncertainty among immigrants that will predictably discourage them and their families from accessing benefits for which they are eligible.

The Department uses various, undefined terms in the NPRM to indicate which programs USCIS officials will be allowed to consider in a public charge assessment. This will amplify the confusion and fear the proposed rule creates, as these terms have potential different meanings and implications. The rule uses "means-tested public benefit,"[9] "public benefits," "public benefit programs," and "public resources." None of these terms is thoroughly defined in one place, it simply says "DHS proposes to eliminate these definitions that limit the *benefits* that are considered as part of the public charge inadmissibility determination"[10] (emphasis added). In another place it says "the receipt of *any type of public benefits* by a qualified alien is relevant and indeed critical to determining whether an alien is actually self-sufficient"[11] (emphasis added). This generates a high degree of uncertainty and lack of clarity regarding the Department's intentions.

Under these various terms, an immigration official might decide any singular or combination of various programs and services are deemed a "public benefit" or "public resource," including many not limited to low-income people. It is beyond imagination that DHS intends that *all* of these benefits should count in the public charge determination, and yet the proposed rule provides no clarity or consistency regarding which programs would or would not be considered and in fact, it explicitly rejects the concept of doing so. By contrast, the 2019 final rule included statements that provided clarity such as "this definition does not include benefits related exclusively to emergency response, immunization, education, or social services"[12] and "DHS will not consider for purposes of a public charge inadmissibility determination whether applicants for admission or adjustment of status are receiving food assistance through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance."[13] This NPRM fails to provide any such clarity.

Without clear guidance, states, local governments, and organizations like ours that help families enroll in or navigate programs and benefits would be unable to provide definitive reassurance to

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[9] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-365.
[10] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-327.
[11] 2025 NRPM https://www.federalregister.gov/d/2025-20278/p-280.
[12] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-522.
[13] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-527.

immigrants and their family members that these programs were safe to use. Refusing to articulate *which benefits* will count has both enormous chilling effects and leaves an excessive amount to the discretion of individual immigration officers, who are not experts in public benefits and cannot reasonably be expected to understand the details of hundreds (or thousands) of programs. We can only conclude that this will also lead to arbitrary if not discriminatory outcomes in application of public charge.

Even if it were clear that only "means-tested public benefit" programs would be considered, it would still be unclear exactly which programs DHS would consider. It might be plausible to guess that the Department is thinking of the programs covered as "Federal means-tested public benefits" under PRWORA, but DHS does not say so explicitly.

Without guardrails, immigration officials would be free to come up with their own definitions of "means-tested benefits" leaving open questions about whether any number of programs might be counted.

Would immigration officials consider hospital financial assistance, which is legally required for non-profit hospitals to provide? Would they consider accessing discounted or sliding-fee care at healthcare facilities that receive federal or state funding, including safety-net clinics? Would advanced premium tax credits provided under the Affordable Care Act be considered? Outside of healthcare, would immigration officials consider child care assistance, pre-K programs, or food support programs? The proposed rule is entirely unclear.

It is also concerning to consider how information regarding some of these potential benefits might be collected if included for assessment and would raise substantial additional questions.

The Department, even if it provided a clear definition of means-tested benefits, has failed to justify its departure from the long-accepted "primarily dependent" standard to the consideration of any means-tested benefits. The reason that cash assistance for subsistence and institutionalization for long-term care have been the only benefits considered in the public charge assessment is that other benefits – even those that are means-tested -- have been recognized as supplemental.[14] For example, in many states, children in families with incomes greater than the federal poverty level are eligible for Medicaid and CHIP, in acknowledgement that this health coverage is meant to support children in families with parents who work.[15] As the judge in one of the 2019 lawsuits noted, the inclusion of these programs reflects an "absolutist sense of self-sufficiency that no person in a modern society could satisfy."[16]

The proposed rule asserts that use of any benefit is relevant to a public charge assessment, but neither provides a logical argument nor offers data to support this claim. A sense of the overreach of this statement in the rule is offered by an analysis of the 2018 proposed rule that

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[14] 1999 NPRM.

[15] KFF, *Medicaid and CHIP Income Eligibility Limits for Children as a Percent of the Federal Poverty Level*, January 2025, https://www.kff.org/affordable-care-act/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Upper%20Income%20Limit%22,%22sort%22:%22desc%22%7D

[16] *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208, 232 (7th Cir. 2020).

found that more than half of all U.S. born citizens could have been found at risk of becoming a public charge if the rule were applied to them. This is because that rule, like the proposed rule, allowed the consideration of supplemental benefits that are widely used by working individuals and their families.[17]

The data demonstrates that immigrants are vital to Colorado's economy, comprising 11.5 percent of our workforce, 15 percent of business owners, and contributing a more than $42 billion to Colorado's GDP. Immigrants considered undocumented in Colorado contributed $436 million in state and local taxes in 2022.[18]

The data also shows that in many cases, access to various public benefits is tied with economic and financial stability and growth. Economic analysis commissioned by the Colorado Health Foundation of the ACA Medicaid expansion in Colorado show that expanding Medicaid added more than 31,000 jobs, increased economic activity by $3.8 billion, and raised household earnings by $643. The analysis also showed that the benefits grow stronger over time, and calculates the economic damage caused by an individual disenrollment. For every noncitizen disenrollment from Medicaid, Colorado loses $3,277 in state GDP, $1,214 in household earnings, and leads to employment loss of 0.02. For every pregnant adult disenrollment, the impacts are even more substantial, with loss of $7,264 in state GDP, $2,691 in household earnings, and employment loss of 0.04.[19]

Medicaid, SNAP, child care, and other benefits are fundamentally supplemental for both citizens and non-citizens. Analysis of 2022 data shows for example, that for a single working parent with a preschooler and one school-age child, access to Medicaid, SNAP/WIC, etc. can meet their family's needs with earning of $2,590/month, whereas they would need to earn $5,460 to meet their basic needs without these supplemental benefits.[20]

The 2019 rule considered use of SNAP benefits as a negative factor. Yet, the program is open to households with incomes exceeding the federal poverty guideline, and its supplemental nature is underscored by the fact that the average SNAP recipient receives only $187 a month in benefits.[21] Large numbers of SNAP recipients, far from being incapable of productive employment, work for some of America's largest corporations. A person or family's use of supplemental programs and benefits should not be counted against them when these corporations fail to provide a livable wage that allows families to meet their basic needs.

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[17] Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.* Center on Budget and Policy Priorities, 2019. https://www.cbpp.org/sites/default/files/atoms/files/5-30-19pov.pdf.

[18] Colorado Fiscal Institute, *Immigrants Power Colorado's Economy*, https://coloradofiscal.org/immigrants-power-colorados-economy/

[19] Colorado Health Foundation, *The Economic Impact of Medicaid Disenrollment.* https://coloradohealth.org/sites/default/files/documents/2025-02/The%20Economic%20Impact%20of%20Medicaid%20Disenrollment%20in%20Colorado%202025.pdf

[20] Colorado Center on Law and Policy, *The Self-Sufficiency Standard for Colorado for 2022*, https://copolicy.org/wp-content/uploads/2022/11/CO22_SSS.pdf

[21] Food and Nutrition Service, *Supplemental Nutrition Assistance Program Participation and Costs*, Data as of September 12, 2025. https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-annualsummary-9.pdf

2. Proposed rule opens door to consideration of benefits used by family members

It is very concerning that the proposed rule appears to leave room for officers to consider benefits used by family members who are not seeking to adjust their status. The rule removes the regulatory definition of "receipt (of public benefits)" (8 CFR Part 212.21(d)) that explicitly states that applying for or receiving benefits on behalf of family members is not considered "receipt." It also fails to provide such reassurance in the preamble, as the 2019 final rule did.[22]

Without that clear language, it is impossible for immigrants to know whether use of benefits by family members – including U.S. citizen children – will harm them when they seek to obtain LPR status, or for providers to offer them meaningful reassurance when accessing programs or services. Moreover, the decision to eliminate this clear statement from the regulations sends a message that is far stronger than if such exclusion had never been part of the regulations. There is no justification provided in the NPRM for this change.

Even after both the 2019 proposed rule change and the 2022 rule reiterated the longstanding rules that did not count benefits used by family members, we heard from numerous immigrant community members who were choosing not to enroll or were actively disenrolling U.S. citizen children for fear it could affect a family member's public charge assessment if filing for a status change. We also heard from family members who were already refraining from visiting hospitals, federally-qualified health centers, and other safety-net clinics for fear that an eligible family member using medical resources or coverage programs would count against anyone in the family with current or future potential public charge assessments. The fear and harm even extended to state-based or more localized programs serving immigrant families in healthcare, nutrition support, or other programs.

CCHI and many other organizations had to invest significant time and resources to mitigate the fear and harm that the 2019 proposed rule change on public charge caused. This included many community presentations, conversations, focus groups, digital surveys, and the creation of various resources/materials that community members and organizations could refer to. We would note that this was necessary even when the rules provided clarity for public charge assessments and what would or would not be considered in the assessments. This underscores the need to proceed with any changes to public charge with extreme caution and provide very clearly communicated standards up front for how rule changes will be applied. This proposed rule will generate extreme uncertainty given the lack of clarity, definitions, or guidelines, and therefore lead to substantially more harm than prior proposed changes to public charge.

C. Immigrant families, state and local governments, and various institutions and organizations have developed strong reliance on the policies clarified in 1999 and formalized in the 2022 regulations.

[22] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-499. Of note, the 2019 final rule discussed this reassurance in the context of arguing that the rule could not be considered to discriminate against certain citizen children on the basis of their parents' nationality, as their receipt of benefits would not be considered in the public charge assessment.

The Department acknowledges that "the regulated public may be relying on aspects of the regulatory scheme in the 2022 Final Rule, which, in many respects substantively aligns with the 1999 Interim Field Guidance"[23] and seeks comments on what aspects of the 2022 Final Rule might have engendered reliance interests, and how DHS should best address such reliance interests given its stated objective for the rulemaking.

Key elements that have engendered reliance interests are:

- The statement that no benefits would be considered other than cash assistance for income maintenance and institutionalization for long term care;
- The statement that applications for or use of benefits by family members would not be considered in a public charge determination; and
- The provisions excluding use of benefits while in an immigration status that is not subject to a public charge assessment.

We repeat our concern that the rule does not include a clear statement that any changes in the policy, whether through regulation or guidance, will be only forward-looking, and that immigration officers will be directed not to consider any benefits received during a time when the stated policy of the United States was that use of such benefits would not have adverse immigration consequences. Such a statement was included in the 2018 notice of proposed rulemaking[24] and the 2019 final rule:

> "as stated in this final rule, DHS will not apply the new expanded definition of public benefit to benefits received before the effective date of this final rule. Therefore, any benefits received before that date will only be considered to the extent they would have been covered by the 1999 Interim Field Guidance. In the commenter's example, SNAP benefits received by an alien prior to the effective date of the final rule would not be considered as part of the alien's public charge inadmissibility determination, because SNAP was not considered in public charge inadmissibility determinations under the 1999 Interim Field Guidance."[25]

The lack of such clarity in this proposal is deeply alarming, and is creating immediate confusion and concern.

The clarity of current rule has been crucial for CCHI and other organizations to confidently provide assurances to immigrant families and communities for which programs it is safe for them to access and under what circumstances. This has allowed us and many other organizations in Colorado, as well as state, county, municipal, and other government entities such as school districts to promote community health and economic stability by providing resources, training, and information to ensure community members know what programs they can access safely.

The lack of clarity from the proposed rule directly impedes our efforts and those of many other entities in Colorado to achieve our goals or missions in serving Coloradans and our communities.

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[23] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-412.
[24] 2018 NPRM: https://www.federalregister.gov/d/2018-21106/p-1274.
[25] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-627.

In particular, the lack of language and assurance in the rule that benefits accessed under prior iterations of the rules will not count against someone in a public charge assessment directly undermines trust and communications built with immigrant families and communities.

D. The withdrawal of regulations to be replaced eventually by unspecified guidance and tools is an attempt to make an end run around the Administrative Procedure Act.

The Department states that it will, following the finalization of the proposed rule, "formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien's circumstances, that are consistent with the statute and congressional intent, and comply with past precedent."[26] But the policy and tools are not provided now, and the rule provides no indication that the Administration intends to submit them to public comment and review. That is deeply concerning in and of itself as this creates a lack of clarity with serious legal ramifications for individuals and their families.

Even more concerning is that it seems the intention is to develop policy guidance that will essentially serve as a regulation, and this is an attempt to avoid the required public notice and comment.[27] Any guidance or tools that are created to direct officers' legal decisions should be made available for notice and comment because of their significant impact on the legal rights of applicants.[28] Simply asking for open-ended feedback and recommendations on what to include in such tools is not a substitute for notice and comment. DHS should modify the regulations as needed through the normal review and comment process rather than evade new regulations and transparent public engagement.

E. The rule suggests that USCIS will rely on potentially illegally obtained data and unproven tools

The proposed rule states "as the administration persists in its efforts to reduce the siloing of data, DHS anticipates working toward the integration of immigration records with records from Federal benefit-granting agencies. The analysis of that data will inform the development of the flexible and adaptive policy and interpretive tools that will guide future public charge inadmissibility determinations."[29] This paragraph suggests that DHS plans to build a tool that officers will use as they make public charge determinations.

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[26] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-105.

[27] "It is well-established that an agency may not escape the notice and comment requirements … by labeling a major substantive legal addition to a rule a mere interpretation….We must still look to whether the interpretation itself carries the force and effect of law, ... or rather whether it spells out a duty fairly encompassed within the regulation that the interpretation purports to construe." *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1024 (D.C. Cir. 2000); *see also General Electric Co. v. EPA*, 290 F.3d 377 (D.C. Cir. 2002).

[28] Administrative Conference of the United States. *Interpretive Rules of General Applicability and Statements of General Policy*. Recommendation 76-5. n.d. Accessed November 25, 2025. https://www.acus.gov/sites/default/files/documents/76-5.pdf.

[29] 2025 NPRM, https://www.federalregister.gov/d/2025-20278/p-287.

This is particularly alarming in the context that DHS has been illegally obtaining information from the Internal Revenue Service (IRS)[30] and benefit granting agencies, including the Social Security Administration[31] and the state agencies that operate SNAP[32] and Medicaid.[33] This data is being linked without required privacy safeguards and with reckless disregard for accuracy.[34] Misreading of this data has already generated ludicrous results, such as the claim that hundreds of 150-year-olds are claiming Social Security benefits.[35] Using this data in public charge assessments, where there is no opportunity for appeals, is both dangerous and illegal.

We have seen firsthand in Colorado how data requests and actions by DHS have generated fear for families and undermining use of state or local programs and benefits. CCHI along with partner organizations and state and local agencies has had to invest significant time and energy to communicate what data has or has not been shared by the state and what that means for residents in our state. Despite our efforts, DHS's data requests have already created a chilling effect and fear in communities while court action proceeds regarding these requests.

It is all the more concerning if the planned tool is an automated decision-support tool or system that relies heavily on algorithmic or artificial intelligence systems.[36] Empirical research shows that automated decision systems reflect the biases and errors of the underlying data.[37] There are increasing numbers of examples where automated or AI decision-support systems have created unintended outcomes or harm in healthcare or bake in inaccurate or biased assumptions.[38] We must conclude that use of similar systems for public charge assessment will carry similar harms and bias. Moreover, when they are not directly programmed, but emerge out of existing data, these systems act as a "black box" in which it is impossible to know how data is used or the logic behind the system's assessments. Without knowing what information they are actually relying on

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[30] *Center for Taxpayer Rights vs. Internal Revenue Service*, 1:25-cv-00457, (D.D.C.) https://www.courtlistener.com/docket/69646607/center-for-taxpayer-rights-v-internal-revenue-service/.
[31] Social Security Administration, Privacy Act of 1974, System of Records, 90 FR 50879, November 11, 2025. https://www.federalregister.gov/documents/2025/11/12/2025-19849/privacy-act-of-1974-system-of-records.
[32] *State of California v. United States Department of Agriculture,* 3:25-cv-06310, (N.D. Cal.). https://www.courtlistener.com/docket/70945300/state-of-california-v-united-states-department-of-agriculture/.
[33] *State of California v. U.S. Department of Health and Human Services,* 3:25-cv-05536 (U.S. District Court for the Northern District of California). https://clearinghouse.net/case/46754/
[34] Makena Kelly and Vittoria Elliott, "DOGE Is Building a Master Database to Surveil and Track Immigrants," *Wired*, 18 April 2025. https://www.wired.com/story/doge-collecting-immigrant-data-surveil-track/.
[35] David Gilbert. "No, 150-Year-Olds Aren't Collecting Social Security Benefits." Tags. *Wired*, February 17, 2025. https://www.wired.com/story/elon-musk-doge-social-security-150-year-old-benefits/.
[36] Estafania McCarroll. "Weapons of Mass Deportation: Big Data and Automated Decision-Making Systems in Immigration Law," *Georgetown Immigration Law Journal*, 34, pp. 705–731, 2020. https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2020/08/Weapons-of-Mass-Deportation-Big-Data-and-Automated-Decision-Making-Systems-in-Immigration-Law.pdf
[37] Virginia Eubanks. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Press, 2019.
[38] Obermeyer, et. al. *Dissecting racial bias in an algorithm used to manage the health of populations*, 2019. https://www.science.org/doi/10.1126/science.aax2342

to make decisions and how it is being weighted or evaluated, the public cannot assess the logic behind recommendations or hold it accountable.[39]

II. The chilling effect of the proposed rule would cause significant and permanent harm

We have already mentioned several times that the changes under this proposed rule will cause significant fear, create a chilling effect, and lead to substantial harm. This is based on evidence we have seen under other proposed changes to public charge and what logically people are likely to do given the extreme uncertainty this rule creates as well as the observed actions taken by DHS in indiscriminate and aggressive actions at the community level.

A. Historical evidence shows large chilling effects that could be even larger today.

1. Chilling effects following 1996 PRWORA

The passage of the 1996 welfare law (PRWORA) led to significant changes in behavior of immigrant populations and provided evidence of chilling effects. Studies conducted following the enactment of PRWORA showed statistical evidence of reduced use of benefits among populations whose eligibility was unchanged by the law, including refugees and U.S.-citizen children with immigrant parents.[40]

Even noncitizens who were not subject to the restrictions of PRWORA experienced adverse public health impacts similar to those who were affected by the law.[41] According to analysis from KFF (formerly the Kaiser Family Foundation) PRWORA also led to many immigrants not seeking public insurance because they feared it would affect their immigration status or jeopardize their ability to become a citizen.[42]

- Use of food stamps among U.S. citizen children fell by 53 percent between 1994-1998[43] and the USDA calculated that less than half (40 percent) of eligible citizen children in households with noncitizen adults participated in SNAP. [44]

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[39] David Freeman Engstrom, and Daniel E. Ho. "Algorithmic Accountability in the Administrative State." *Yale Journal on Regulation,* 37, no. 3 (2020). https://www.yalejreg.com/print/algorithmic-accountability-in-the-administrative-state/.
[40] Francisco I. Pedraza and Ling Zhu, "The 'Chilling Effect' of America's New Immigration Enforcement Regime," *Pathways,* Spring 2015, https://inequality.stanford.edu/sites/default/files/Pathways_Spring_2015_Pedraza_Zhu.pdf.
[41] Robert Kaestner and Neeraj Kaushal, "Immigrant and Native Responses to Welfare Reform," *Journal of Population Economics* 18, no. 1 (2005): 69–92.
[42] Peter Feld and Britt Power, *Immigrants' Access to Health Care after Welfare Reform: Findings from Focus Groups in Four Cities*, KFF (formerly the Kaiser Family Foundation), 2000. www.kff.org/medicaid/report/immigrants-access-to-health-care-after-welfare/.
[43] Jenny Genser, *Who Is Leaving the Food Stamp Program: An Analysis of Caseload Changes from 1994 to 1997,* U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, 1999. https://fns-prod.azureedge.us/research/snap/leaving-program-analysis-caseload-changes-1994-1997
[44] Karen Cunnyngham, *Trends in Food Stamp Program Participation Rates: 1999 to 2002*, Table 6, USDA, September 2004. https://fns-prod.azureedge.us/sites/default/files/Trends99-2002.pdf.

- Refugees whose eligibility for public benefits were not directly affected PRWORA between 1994 and 1998 used food stamps 60 percent less, Medicaid 39 percent less, and TANF 78 percent less.[45]

2. Chilling effects of the 2019 Trump public charge rule

It is more challenging to quantify the chilling effect resulting from the 2019 rule because the rule was in effect for only a limited time, and the confounding effects of the COVID-19 pandemic, with the fluctuating contraction and expansion of temporary benefits and resources. We must look to survey responses of immigrants and members of immigrant families indicating avoidance of public benefit programs. Most of these studies look at participation change prior to the pandemic and largely measure the effect of the announcement of the proposed rule in 2018 and substantial media coverage thereof.

Direct surveys of the chilling effect.

The Urban Institute's Well-Being and Basic Needs Survey (WBNS), started in 2018, includes questions about whether adults in immigrant families, in which the respondent or a family member was not born in the U.S., avoided participation in non-cash safety net programs due to immigration status concerns. The survey results illustrate the impact and chilling effect after the 2019 rule was withdrawn and replaced by the 2022 rule. Those findings align with our experience in Colorado where the fear and chilling effect linger strongly from the 2019 rule. Key findings from the Urban Institute include:

- In 2019, 15.6 percent of adults in all immigrant families, and 31 percent of adults in families that included one or more nonpermanent residents, reported avoiding applying for non-cash benefits.[46] This was higher, 26.2 percent, among low-income immigrant families.
- This chilling effect was double families with children. at 20.4 percent for immigrant families with children in 2019 vs. 10.0 percent for immigrant families without, and was even more acute for low income families with children at 31.5 percent. Similar gaps existed in other years. This is likely because families with children are more likely to have a member eligible for such benefits. The survey also found that 76.8 percent of adults in immigrant families with children did not understand that children's program enrollment would not be considered in their parents' public charge determinations. Chilling effects were reported across a variety of forms of support, including programs not specified in the rule such as WIC, free or reduced price school lunch, free or reduced-price medical care for uninsured people, and health insurance purchased through

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[45] Michael E. Fix and Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994–1997,* Urban Institute, 1999. http://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

[46] Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019.

the Marketplaces.[47] These results again align with what we've heard from immigrant families in Colorado.

- Even in 2023, after the 2022 rule was fully in place, and before the re-election of Donald Trump, 11.7 percent of adults in all immigrant families, and 23.6 percent of adults in mixed-immigration status families, reported avoiding applying for non-cash benefits.[48]
- The chilling effect reached even members of immigrant families in which *all* members of the family were citizens (6.7 percent in 2019) or in which all noncitizen members were permanent residents (16.7 percent in 2019).[49] This was a consistent pattern in all years of the survey series.

Researchers at KFF have found similar impacts through surveys. KFF's study, for which all of the respondents were themselves immigrants (including naturalized citizens),[50] includes these key findings:

- The share of immigrant adults who said they avoided applying for a government program that helps pay for food, housing, or health care in the past 12 months because they did not want to draw attention to their or a family member's immigration status rose from 8 percent to 12 percent between 2023 and 2025. 11 percent said that they have stopped participating in such a program since January 2025 because of immigration-related worries.
- Among parents, the share who say they avoided applying for a program rose from 11% to 18 percent. This suggests that even though the survey did not explicitly say to include benefits received on behalf of a child, the respondents did so.

Participation data

MPI researchers using American Community Survey (ACS) data found that participation in cash assistance under TANF, food assistance under SNAP, and health coverage under Medicaid declined far more rapidly for noncitizens than for U.S.-born citizens between 2016 and 2019. The share of children receiving benefits fell about twice as fast for all of these programs among

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[47] Jennifer M. Haley, Genevieve M. Kenney, Hamutal Bernstein, and Dulce Gonzalez, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019.

[48] Dulce Gonzalez, Hamutal Bernstein, Michael Karpman, and Genevieve M. Kenney. *Mixed-Status Families and Immigrant Families with Children Continued Avoiding Safety Net Programs in 2023*. Urban Institute, 2024. https://www.urban.org/research/publication/mixed-status-families-and-immigrant-families-children-continued-avoiding.

[49] Bernstein et al. 2020, op cit. (Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute, 2020. https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019.)

[50] Drishti Pillai et al. *KFF/New York Times 2025 Survey of Immigrants: Health and Health Care Experiences During the Second Trump Administration*. KFF, 2025. https://www.kff.org/immigrant-health/kff-new-york-times-2025-survey-of-immigrants-health-and-health-care-experiences-during-the-second-trump-administration/.

U.S. citizen children who live in households with noncitizen household members as it did among children with only citizens in their households, almost as much as participation by non-citizens themselves.[51] The participation decline accelerated between 2018 and 2019.

The declines in SNAP and TANF participation were much larger than the declines in Medicaid use, consistent with other research that has found that immigrant parents were more likely to apply for Medicaid than for SNAP, because they could identify other "coping strategies" to acquire food.[52] However, we would note we hear consistently of Colorado families who are avoiding Medicaid for which a family member is eligible for fear of immigration repercussions.

SNAP administrative data found that the number of children in mixed-status households receiving SNAP benefits dropped by 22.5 percent – more than 718,000 children – from 2017 to 2018. The rate of decrease was five times the rate of the decrease among U.S. children in citizen-only households.[53] This decline also shows up in USDA's estimates of the participation rate for eligible citizen children in households with noncitizen adults, which fell from 80 percent in 2016 to 64 percent in the first months of 2020 (pre pandemic). The participation rate of eligible non-citizens fell in the same time period from 66 percent to 52 percent.[54]

We heard from immigrant families making these choices both during the process leading up to the 2019 rule and beyond. The fear lingered beyond the 2022 rule and CCHI and other organizations have had to continue to assuage fears of public charge prior to this proposed rule. Community members reported refraining from using benefits if they were already enrolled and some reported families disenrolling citizen children for fear of public charge impacts. Anecdotes in 2025 indicate a likely resurgence of avoidance and of these harms, a resurgence that will grow exponentially should this proposed rule be finalized, that ultimately prevents eligible citizens and documented individuals from receiving benefits for which they are eligible and that make our communities stronger. It is difficult to counteract this chilling effect, even when there is the necessary clarity for what programs will be considered in public charge assessments, clarity this rule fails to provide.

3. Today's environment will produce even greater chilling effects.

This proposed rule and its abundant lack of clarity will create, and indeed seems designed to create, even more fear and an even larger chilling effect than we have seen previously. This will significantly increase the losses of coverage at a time when health coverage and access to other public benefits will already be contracting substantially due to H.R. 1. In the current context of

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[51] Jeanne Batalova, Randy Capps, Michael Fix, *Anticipated 'Chilling Effects' of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*, Migration Policy Institute, December 21, 2020. https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real.

[52] *Food Over Fear: Overcoming Barriers to Connect Latinx Immigrant Families to Federal Nutrition and Food Programs*. Food Research & Action Center and the National Immigration Law Center. https://frac.org/research/resource-library/nilc-latinximmigrantfamilies.

[53] Alexandra Ashbrook, *New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen*, Food Research & Action Center, 2021.

[54] Alma Vigil, *Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2020*, Table 2, USDA, December 2022. https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-trends-fy2016-2020.pdf

extensive threats to immigrant communities, this will reinforce fears of repercussions, real or imagined, and the resulting harms will be substantially increased. [55] This rule will ultimately amplify the harms to communities, will lead to worse health outcomes, increase medical debt, increase burden on our health care systems and providers, and undermine our state and national economy as more families struggle to meet their basic needs.

The chilling effect is also accentuated by DHS' efforts to access data about taxpayers from the Internal Revenue Service (IRS)[56] and about benefit recipients from the Social Security Administration[57] and the state agencies that operate SNAP[58] and Medicaid.[59] These efforts are in violation of privacy laws, and break explicit promises that the federal government has made.[60] Other policy changes—such as the attacks on birthright citizenship, arrests at green card interviews, the premature termination of Temporary Protected Status (TPS) for most designated groups, and the plan to review all refugee statuses granted under the previous Administration—combine to undermine immigrants' trust in government and their faith that promises will be kept. All of this is adding to the chilling effect and this rule will exacerbate the harm with its abundant lack of clarity regarding which benefits will count in a public charge determination, the degree of usage that will count, and whether benefits received by other family members will count will also foreseeably heighten chilling effects.

B. The harm of the chilling effect will be substantial – and higher than DHS acknowledges

1. The Department's estimates of the impact of the rule dramatically understate the harm.

The proposed rule includes an economic impact analysis, which predicts that approximately 447,000 people will disenroll or forgo enrollment in SNAP, 364,000 in Medicaid, 64,000 in Supplemental Security Income (SSI), 59,000 in CHIP and 16,000 in cash assistance under Temporary Assistance for Needy Families (TANF).[61] However, as harmful as this impact would be, it is likely a significant understatement of the harm.

The Department's primary estimates of the chilling effect are based on a 10.3 percent chilling effect. This is not based on any specific estimate of chilling effect but is rather the mathematical

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[55] Lei Chen, Maria-Elena De Trinidad Young, Michael A. Rodriguez, and Kathryn Kietzman. "Immigrants' Enforcement Experiences and Concern about Accessing Public Benefits or Services." *Journal of Immigrant and Minority Health* 25, no. 5 (2023): 1077–84. https://doi.org/10.1007/s10903-023-01460-x.
[56] *Center for Taxpayer Rights v. Internal Revenue Service,* 1:25-cv-00457 (D.D.C.). https://www.courtlistener.com/docket/69646607/center-for-taxpayer-rights-v-internal-revenue-service/.
[57] Social Security Administration, Privacy Act of 1974, System of Records, 90 FR 50879, November 11, 2025. https://www.federalregister.gov/documents/2025/11/12/2025-19849/privacy-act-of-1974-system-of-records
[58] *State of California v. United States Department of Agriculture,* 3:25-cv-06310, (N.D. Cal.). https://www.courtlistener.com/docket/70945300/state-of-california-v-united-states-department-of-agriculture/.
[59] *State of California v. U.S. Department of Health and Human Services* 3:25-cv-05536 (N.D. Cal.). https://clearinghouse.net/case/46754/.
[60] Chye-Ching Huang, Brandon DeBot, Michael Kaercher, et al. *Treasury-DHS Tax Data Sharing Agreement Raises Grave Legal and Practical Concerns,* The Tax Law Center, NYU Law, April 10, 2025. https://taxlawcenter.org/blog/treasury-dhs-tax-data-sharing-agreement-raises-grave-legal-and-practical-concerns.
[61] 2025 Final Rule, Table VI.10, https://www.federalregister.gov/d/2025-20278/page-52214

midpoint between a 3.3 percent estimate that is based on the share of all noncitizens who adjust status each year (e.g. assumes no chilling effect on anyone who is not adjusting in that calendar year) and a 17.3 percent estimate that purports to be derived from the Urban Institute and KFF studies.[62] However, the Department does not show how they reached this calculation, which appears to include results for all-citizen immigrant households. Moreover, this combines results from the period when the 2019 rule was in effect and from the period when the 2022 rule was in effect. Based on the studies cited above, disenrollment rates from 10 to 30 percent are more plausible, with 20 percent as a midpoint estimate. These are the rates used in a new KFF estimate of the chilling effect on Medicaid and CHIP.[63]

Moreover, as the KFF analysis points out, the Department's estimate of the population to which this chilling rate should be applied is demonstrably too low. DHS estimates that 3.5 million Medicaid enrollees and 570,000 CHIP enrollees lived in a household with at least one person who is not a citizen.[64] KFF's analysis of American Community Survey data finds that there are actually about 13.4 million Medicaid or CHIP enrollees living in a household with at least one noncitizen. In addition, there are nearly 1.8 million uninsured individuals in a household with at least one noncitizen who are eligible for Medicaid or CHIP but not enrolled, and could be deterred from applying.[65]

2. Much of the impact will fall on children and pregnant people.

19 million children, most of them U.S. citizens, have at least one immigrant parent (either a non-citizen parent or naturalized citizen parent). Only about three percent of children in the U.S. are themselves noncitizens.[66] Many of these children will suffer from this rule and the chilling effect it will have.

Children in immigrant families are more likely to face certain hardships, and are already less likely to access help due in part to flawed policies that create barriers to immigrant families' ability to access critical public benefits.[67] These children were disproportionately impacted

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[62] 2025 Final Rule, https://www.federalregister.gov/d/2025-20278/p-480

[63] Samantha Artiga, Drishti Pillai, Sammy Cervantes, Akash Pillai and Matthew Raie, *Potential "Chilling Effects" of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF, 2025. https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/

[64] 2025 Final Rule, Table VI.10, https://www.federalregister.gov/d/2025-20278/page-52214

[65] Artiga et al, op cit. (Samantha Artiga, Drishti Pillai, Sammy Cervantes, Akash Pillai and Matthew Rae, *Potential "Chilling Effects" of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF, 2025. https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/)

[66] Drishti Pillai, Akash Pillai, and Samantha Artiga. *Children of Immigrants: Key Facts on Health Coverage and Care*. KFF, 2025. https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/.

[67] Tanya Broder and Gabrielle Lessard *Overview of Immigrant Eligibility for Federal Programs,* National Immigration Law Center, 2024, https://www.nilc.org/wp-content/uploads/2024/05/overview-immeligfedprograms-2024-05-08.pdf ; Kinsey Alden Dinan, *Federal Policies Restrict Immigrant Children's Access to Key Public Benefits,* National Center for Children in Poverty, 2005. http://www.nccp.org/publications/pdf/text_638.pdf.

during the COVID-19 pandemic, in which families with immigrant mothers experienced greater food insecurity or being behind on rent compared to families with US-born mothers.[68] Given the restrictions on immigrants' eligibility for public benefits, much of the impact of the chilling effect will fall on U.S. citizen children in immigrant families who remain eligible. For example, the KFF analysis cited above finds that somewhat under half of the Medicaid or CHIP enrollees who live in a household with at least one noncitizen – 5.9 million out of 13.4 million – are U.S. citizen children.[69]

Even after H.R. 1, pregnant people and children who are lawfully present remain eligible for Medicaid or CHIP in more than half of states that have elected to provide that coverage, including Colorado. This is another group that could be harmed by the chilling effect.

We are hearing early anecdotes of precisely this impact, with families choosing not to renew or disenroll citizen children for fear of the potential impact on a non-citizen family member.

The proposed rule would change the lives not only of children, but of countless families across the United States. These children do not live in isolation. They will grow up and live in communities where their individual success is critical to the strength of the country's future workforce and our collective economic security. It is important to America's future to do everything we can as a nation to ensure that these children succeed – and at the very least, stop putting their healthy development and education at risk by destabilizing their families. Forcing parents to choose between their own immigration status—or the ability to reunite their family in the future—and their children's access to these benefits is short-sighted and will harm all of U.S. society.

3. Benefits access, especially for children, produces documented positive outcomes.

The chilling effect of public charge will only worsen hunger, unmet health care needs, health outcomes, poverty, homelessness, and other serious problems. It is well documented that when children and families have access to programs and services that help meet their basic needs, it promotes healthy development, addresses food insecurity and hunger, improves economic and financial security, leads to higher health outcomes, and improves educational attainment. These improve lifelong outcomes not just for the individuals, but for communities as a whole. Under this proposed rule, these individual and societal benefits will be lost for hundreds of thousands of children from the chilling effect this rule will create.

While we could expound on the positive results of many benefit programs, we will focus on access to health coverage through Medicaid. Access to health insurance coverage creates substantial short and long-term benefits for children. Children in immigrant families with health

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[68] Allison Bovell-Ammon, Stephanie Ettinger de Cuba, Félice Lê-Scherban, et al. "Changes in Economic Hardships Arising During the COVID-19 Pandemic: Differences by Nativity and Race." *Journal of Immigrant and Minority Health* 25, no. 2 (2023): 483–88. https://doi.org/10.1007/s10903-022-01410-z.

[69] Artiga et al, op cit. (Samantha Artiga, Drishti Pillai, Sammy Cervantes, Akash Pillai and Matthew Raie, *Potential "Chilling Effects" of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF, 2025. https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicaid-and-chip-enrollment/)

insurance coverage are more likely to receive regular health visits, have a usual source of care, and are less likely to have unmet care needs in the short-term.[70] The benefits grow exponentially in the longer-term. Children covered through Medicaid in their early years, have better health, educational, and employment outcomes in adulthood. These include health outcomes such as decreased chance of developing high blood pressure, decreased walking difficulty, and lower mortality in adulthood.[71]

It also generates savings in the long run. A summary of twenty years of rigorous evaluation research found that children's access to public health insurance and Medicaid improved health outcomes and lowered government expenditures by a factor of 4 to 1.[72] When the lifetime benefits to children were factored into the analysis, the benefit-cost ratio rose to 12.66 to 1 (that is, for every dollar spent on public health insurance for children, savings to government plus benefits to children amounted to $12.66). These benefits occur through improved health, education and employment outcomes in adulthood.

Fears of accessing Medicaid during pregnancy can also have negative consequences. Avoidance of prenatal care, high maternal stress, and poor nutrition can lead to adverse birth outcomes. A cohort study published in the American Journal of Perinatology examining nearly 29 million deliveries found inadequate prenatal care significantly increased the odds of preterm birth, intrauterine growth restriction, stillbirth, and neonatal death.[73] Expanding Medicaid eligibility during pregnancy to previously uncovered immigrants has been found to significantly increase use of prenatal care and support more regular prenatal visits. In turn, this resulted in improved birth outcomes, as measured by increased average gestational length (e.g. fewer premature births) and birthweight among infants born to immigrant mothers.[74]

The benefits of providing Medicaid coverage extend far beyond immigrant populations, as the benefits support local communities as a whole. That also means the harm caused by this rule will extend far beyond immigrant families. As immigrant families lose access to health coverage, it will have a broader impact on communities and their health care systems and infrastructure. A growing body of high-quality research now supports the claim that health insurance improves

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[70] Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21, 2017. https://link.springer.com/article/10.1007/s10995-017-2331-y

[71] Rourke O'Brien and Cassandra Robertson, *Medicaid and Intergenerational Economic Mobility*, University of Wisconsin—Madison, Institute for Research on Poverty, 2015, https://search.library.wisc.edu/catalog/9910223409002121; Andrew Goodman-Bacon, *The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes,* NBER Working Paper No. 22899, 2016, www.nber.org/papers/w22899; Michel Boudreaux et al. "The Long-Term Impacts of Medicaid Exposure in Early Childhood: Evidence from the Program's Origin." *Journal of Health Economics*. Nov 2019. https://www.ncbi.nlm.nih.gov/pubmed/26763123

[72] Janet Currie & Anna Chorniy, "Medicaid and Child Health Insurance Program Improve Child Health and Reduce Poverty But Face Threats", *Acad Pediatr*. 2021 Nov-Dec;21(8S):S146-S153.; Goodman-Bacon (2016) op cit.

[73] Sarah Partridge, et al. "Inadequate Prenatal Care Utilization and Risks of Infant Mortality and Poor Birth Outcome: A Retrospective Analysis of 28,729,765 U.S. Deliveries Over 8 Years." American Journal of Perinatology. Jul 2019. https://www.ncbi.nlm.nih.gov/pubmed/22836820.

[74] Sarah Miller, Laura Wherry, and Gloria Aldana. "Covering Undocumented Immigrants: The Effects of a Large-Scale Prenatal Care Intervention," NBER Working Paper 30299 (March 2024). https://www.nber.org/papers/w30299

health outcomes, including reducing mortality.[75] Research focused specifically on Medicaid expansion identifies benefits including financial security, some measures of health status/outcomes, and economic benefits for states and providers.[76] Facing decreased access to preventive care, people without insurance, such as those ineligible because of their immigration status, often put off seeking medical attention or do not fill prescriptions until health conditions have worsened, requiring more costly intervention, including emergency care.[77]

As highlighted earlier from Colorado specific analysis, loss of Medicaid coverage has significant and broad economic harms that will threaten the sustainability of health care providers, clinics, and hospitals and impact the services they can provide in their communities for all residents. An analysis of the 2018 proposed rule by the noted health care consulting firm Manatt Health estimated that it put $17 billion of payments to hospitals at risk.[78] In comments on the 2022 proposed rule, America's Essential Hospitals explained "Patients forgoing public insurance programs and seeking care at hospitals without insurance strained the tight budgets of essential hospitals. The detrimental effects of the rule reached even further—it harmed the nation's health care system at large, resulting in increased health care costs and worse health outcomes."[79]

C. Chilling effects are predictable and DHS is obligated to minimize them.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.[80] The proposed rule fails to meet these requirements.

The Department is well aware of the chilling effect of the public charge rules. As explained in the preamble to the 2022 final rule:

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[75] Helen Levy and Thomas C. Buchmueller, "The Impact of Health Insurance on Mortality." *Annual Review of Public Health,* Volume 46, 2025 (2025): 541–50. https://doi.org/10.1146/annurev-publhealth-061022-042335. See also: Todd Frankel, "Is Health Insurance a Matter of Life and Death? Scientists May Have an Answer." *The Washington Post*, November 9, 2025. https://www.washingtonpost.com/business/2025/11/09/government-shut-down-health-insurance-deaths/.

[76] Madeline Guth, and Meghana Ammula, *Building on the Evidence Base: Studies on the Effects of Medicaid Expansion, February 2020 to March 2021*, *KFF*, May 6, 2021. https://www.kff.org/affordable-care-act/building-on-the-evidence-base-studies-on-the-effects-of-medicaid-expansion-february-2020-to-march-2021/.

[77] K. Robin Yabroff, Jingxuan Zhao, Michael T. Halpern, et al. "Health Insurance Disruptions and Care Access and Affordability in the U.S." *American Journal of Preventive Medicine* 61, no. 1 (2021): 3–12. https://doi.org/10.1016/j.amepre.2021.02.014.

[78] Cindy Mann et al. *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

[79] America's Essential Hospitals, *Comment on Public Charge Ground of Inadmissibility,* April 25, 2022. https://essentialhospitals.org/wp-content/uploads/2022/04/Public-Charge-NPRM-Comment-Letter-4-25-22-for-archive.pdf .

[80] *Improving Regulation and Regulatory Review*, Executive Order 13563, January 21, 2011. https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review.

> "The 2019 Final Rule was associated with widespread indirect effects, primarily with respect to those who were not subject to the 2019 Final Rule in the first place, such as U.S.-citizen children in mixed-status households, longtime lawful permanent residents who are only subject to the public charge ground of inadmissibility in limited circumstances, and noncitizens in a humanitarian status who would be exempt from the public charge ground of inadmissibility in the context of adjustment of status."[81]

Indeed, these chilling effects are recognized in the current proposed rule, in the discussion of likely costs of the rule. Specifically, DHS acknowledges that "elimination of certain definitions may lead to public confusion or misunderstanding of the proposed rule, which could result in decreased participation in public benefit programs by individuals who are not subject to the public charge grounds of inadmissibility."[82]

The proposed rule specifically recognizes harms that could "include:

- Worse health outcomes, such as increased prevalence of obesity and malnutrition (especially among pregnant or breastfeeding women, infants, and children), reduced prescription adherence, and increased use of emergency rooms for primary care due to delayed treatment.
- Higher prevalence of communicable diseases, including among U.S. citizens who are not vaccinated.
- Increased rates of uncompensated care, where treatments or services are not paid for by insurers or patients.
- Increased poverty, housing instability, reduced productivity, and lower educational attainment."[83]

As well as additional harms including:

- "Lower revenues for healthcare providers participating in Medicaid.
- Reduced income for companies manufacturing medical supplies or pharmaceuticals.
- Decreased sales for grocery retailers participating in SNAP.
- Economic impacts on agricultural producers supplying SNAP-eligible foods.
- Financial strain on landlords participating in federally funded housing programs."[84]

At the same time, DHS maintains that this is not the "intent" of the regulation and therefore suggests that it has no obligation to minimize these harms. Similarly, in the 2019 final rule, DHS acknowledged the likely chilling effect of the policy on groups not subject to a public charge determination, but stated that disenrolling or forgoing enrollment would be "unwarranted" and therefore "DHS will not alter this rule to account for such unwarranted choices."[85]

Given the great uncertainty and abundant lack of clarity created by the proposed rule about which benefits are safe to use, and whether family members' use of benefits can be held against

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[81] 2022 Final Rule: https://www.federalregister.gov/d/2022-18867/p-1414.
[82] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-453.
[83] 2025 NPRM https://www.federalregister.gov/d/2025-20278/p-523.
[84] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-529.
[85] 2019 Final Rule: https://www.federalregister.gov/d/2019-17142/p-535.

an applicant for status, families are likely to take a cautious view and avoid using benefits that could possibly count against them. Such a choice cannot reasonably be described as "irrational," "unpredictable" or "unwarranted." Therefore, the Department must take the likelihood of such choices into account.

Even if deterring immigrants and their families from benefits is not the intent, the Department is required to show that it cannot achieve the goal of implementing its statutory requirements in an alternative way that causes less harm. The proposed rule makes no attempt to do so.

III. The rule will give USCIS officers boundless discretion that will fundamentally reshape America's immigration system

A. Family-based immigration will be most impacted

The U.S. immigration system has long prioritized family reunification. Immediate relatives of U.S. citizens, including spouses and minor unmarried children, and parents of adult citizens, receive top priority. The landmark Immigration and Nationality Act (INA) of 1965 made this abundantly clear in its key provisions.[86] Adult children and siblings of citizens, and immediate relatives of LPRs also receive preference, but are limited in both overall numbers and by per-country caps. From 2014 to 2023, family-sponsored immigrants have accounted for nearly two-thirds of all persons obtaining LPR status.[87] Because people seeking green cards through a humanitarian pathway are not subject to a public charge determination, and because a valid Affidavit of Support will not be enough to overcome a finding of public charge, family-based immigration will be most affected by a more restrictive public charge determination.

If implemented, this rule could result in large numbers of noncitizens being denied LPR status. The Department does not directly estimate how many more people would be found inadmissible, but states that the "primary benefit of the proposed rule is the removal of overly-restrictive provisions" and that this will lead to "fewer inadmissible aliens entering the United States."[88] A sense of the possible impact of the rule is offered by the analysis of the 2018 proposed rule – which, while sweeping, would have retained some limits on which public benefits could be considered – that found that more than half of all U.S. born citizens could have been found at risk of becoming a public charge if the rule were applied to them.[89]

By statute, the public charge determination is a forward-looking assessment, asking whether the noncitizens are likely to become primarily dependent on government aid in the future. The Department's insistence in the preamble that any past receipt of assistance is relevant to this assessment is simply false and ignores the fact that individuals who enter as family-based immigrants frequently start with lower incomes but soon experience upward mobility. Focusing

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[86] Section 201(b) of the INA (as amended in 1965), 8 U.S.C. § 1151(b).
[87] Congressional Research Service. *Primer on U.S. Immigration Policy*, 2025. https://www.everycrsreport.com/reports/R45020.html.
[88] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-450 and p-451.
[89] Trisi op cit. (Danilo Trisi, *Trump Administration's Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come to or Stay in the U.S.* Center on Budget and Policy Priorities, 2019. https://www.cbpp.org/sites/default/files/atoms/files/5-30-19pov.pdf).

only on initial low earnings – and related use of benefits – misses a key part of the story.[90] As a recent article explained, "individuals entering as family immigrants start with lower initial earnings but quickly adapt by trying new jobs and investing in skills and education that lead to rapid earnings growth."[91]

Immigrants, including those with low incomes, work in important jobs and contribute to economic growth.[92] A recent study found that "real earnings increased by 76% over 12 years for immigrants from countries where family sponsorship is the primary method of immigrating to the United States" compared to 23% for U.S. born workers the same age over the same period.[93] And the children of immigrants experience higher rates of social mobility than children of U.S. born. This has been true historically and remains true today despite very different labor markets and patterns of immigration.[94]

According to an analysis of the 2018 proposed rule by the Migration Policy Institute, the changes –even if administered in a racially neutral manner – would likely cause a significant shift in the origins of immigrants seeking visas and green cards, away from Mexico and Central America and towards Europe.[95] This trend would not only reduce the diversity of immigration to the United States, it would disproportionately increase family separation among immigrants of color – and US citizens - already residing in the US.

B. The proposed rule improperly centers the subjective opinion of immigration officers.

The proposed rule seeks to provide immigration officers with unbounded discretion to determine which factors are relevant in making the public charge assessment. The NPRM goes so far as to state that such discretion is "the primary source of unquantified benefits of this proposed rule."[96] As discussed above, this is an inaccurate reading of the INA, which leaves the public charge assessment to the "opinion of the Attorney General at the time of application for admission or

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[90] Harriet Duleep, Mark Regets, and Guillermo Cantor, *The Immigrant Success Story: How Family-Based Immigrants Thrive in America*, American Immigration Council, 2018. https://www.americanimmigrationcouncil.org/report/immigrant-success-story/.

[91] Stuart Anderson, "New Immigration Policy Likely to Block Many Family Immigrants," *Forbes*, November 25, 2025. https://www.forbes.com/sites/stuartanderson/2025/11/25/new-immigration-policy-likely-to-block-many-family-immigrants/.

[92] Daniel Costa, Josh Bivens, Ben Zipperer, and Monique Morrissey, *The U.S. Benefits from Immigration but Policy Reforms Needed to Maximize Gains*, Economic Policy Institute, 2024. https://www.epi.org/publication/u-s-benefits-from-immigration/. National Academy of Sciences, "The Economic and Fiscal Consequences of Immigration," 2017, https://www.nap.edu/read/23550/chapter/2.

[93] Mark Regets, *The Economic Advancement, Adaptation and Integration of Family Immigrants in America*, National Foundation for American Policy, 2025. https://nfap.com/research/new-nfap-policy-brief-the-economic-advancement-adaptation-and-integration-of-family-immigrants-in-america/.

[94] Ran Abramitzky, et al. "Intergenerational Mobility of Immigrants in the United States over Two Centuries," *American Economic Review*, Vol 111, No.2, 2021. https://elisajacome.github.io/Jacome/ImmigrantMobility_AER.pdf.

[95] Randy Capps, Mark Greenberg, Michael Fix, and Jie Zong, *Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration*, Migration Policy Institute, November 2018. https://www.migrationpolicy.org/research/impact-dhs-public-charge-rule-immigration.

[96] 2025 NPRM: https://www.federalregister.gov/d/2025-20278/p-114.

adjustment of status..."[97] Without guidance, immigration officers, who are not experts in public benefits, will have to decide which of hundreds of benefits (including state and local benefits) are relevant.

Such discretion creates the opportunity for bias to influence decisions. The proposed rule fails to make any case for why the unfettered discretion of immigration officers is so essential as to justify the high risk of discrimination affecting public charge assessments. In addition, the risk is not just that of discrimination, but in arbitrary application of the law and the public charge assessment. If USCIS officers have boundless discretion in public charge determinations and what factors they do or do not assess, it is essentially impossible for public charge assessments to be conducted in a manner that is remotely consistent or predictable. To make the arbitrary application of public charge assessments worse, the proposed rule would remove the requirement contained in the current regulations that USCIS officers include in their denial of admission a specific articulation of the reasons for the determination and the factors that were considered. This will fundamentally obscure the criterion used in public charge assessments by USCIS officials individually and as a collective. The 2022 final rule explained that articulation of the reasons "will help ensure that public charge inadmissibility determinations will be fair, transparent, and consistent with the law."[98]

C. The reliance on public charge bonds is a tax on those who can least afford it; it is impractical and does not alleviate the harm of the overall rule

The only portion of the existing regulations that the proposed rule would retain is the discussion of public charge bonds. If an officer finds that a noncitizen is only inadmissible on the basis of public charge, and is otherwise eligible for adjustment of status, the officer may (at their discretion) offer the noncitizen an opportunity to post a public charge bond. This policy puts a fig leaf on the harshness of the proposed rescission of the 2022 public charge rule; some of those who are initially rejected may get a second chance by posting a bond. However, even this is subject to arbitrary discretion and potential discrimination or bias – some applicants will not even get a chance to post a bond.

The use of public charge bonds is a tax on those who can least afford it. There is no evidence demonstrating that public charge bonds will achieve the desired outcome of preventing people from becoming dependent on government assistance. Impoverishing immigrants and their families will make them more, not less, likely to need assistance. The bond will use up resources needed to establish secure housing, or get the tools and materials needed to start employment. If funds are borrowed, the payments and interest will put family budgets in a hole every month.[99]

IV. Conclusion

For all the foregoing reasons, the Department should immediately withdraw its current proposal and instead dedicate its efforts to advancing policies consistent with statute and case law that

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[97] 8 U.S.C. § 1182(a)(4)(A).
[98] 2022 Final Rule: https://www.federalregister.gov/d/2022-18867/p-1358.
[99] Color of Change and ACLU, *Selling Off Our Freedom: How insurance companies have taken over our bail system* (May 2017). https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf.

strengthen—rather than undermine—the ability of immigrants to support themselves and their families.

Our comments include numerous citations to supporting research and relevant documents, including direct links for the benefit of the Department in reviewing our comments. We direct the Department to each of the studies or documents cited and made available to the agency through active hyperlinks, and we request that the full text of each of the items cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

CCHI and the undersigned organizations appreciate the opportunity to comment on this Notice of Proposed Rulemaking from the Department of Homeland Security. If you have any questions regarding our comments, please contact Adam Fox, afox@cohealthinitiative.org.

Sincerely,

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