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November 2, 2020

***Submitted via [www.regulations.gov](http://www.regulations.gov)***

U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

**RE: CIS No. 2655-20; DHS Docket No. USCIS-2019-0023;  
RIN: 1615-AC39: Comments in Response to Proposed  
Rulemaking: Affidavit of Support on Behalf of  
Immigrants.**

To whom it may concern:

The National Health Law Program (NHeLP) submits this comment letter in response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking, "Affidavit of Support on Behalf of Immigrants" which was published in the Federal Register on October 2, 2020. NHeLP protects and advances the health rights of low-income and underserved individuals and families by advocating, educating, and litigating at the federal and state level.

We strongly oppose the proposed changes to the Affidavit of Support regulations. We know from our expertise on Medicaid, the Children's Health Insurance Program and the federal and state marketplaces that this policy will increase costs, cause confusion, delays and fear, and ultimately deter sponsors from supporting family members' path to a green card. This proposed policy clashes with our country's commitment to supporting family reunification and supporting peoples' path to lawful permanent residency and citizenship.

If finalized, the proposed policy is also likely to dissuade immigrants and U.S. citizens alike from accessing essential health care and nutrition benefits for which they and members of their household are eligible. The additional documentary requirements included in the proposed rule—requiring three years of tax return information, bank account details, and credit history—create a substantial administrative burden and deterrent, and place sponsors in risk of financial fraud without even being relevant to determining sponsor’s income. Moreover, DHS fails to adequately evaluate the impacts of the proposed rule. While DHS describes the purpose of the rule as ensuring that sponsors and household members can meet their obligations, its true motive seems to be to limit family-based immigration.

**I. The proposed policy would deter immigrants and U.S. citizens alike from relying on health care and nutrition benefits**

The proposed rule would disregard a sponsor’s income and require them to have a joint sponsor if the sponsor or a member of their household have used public benefits—including Medicaid, CHIP, SNAP, SSI and TANF—anytime within 36 months of executing the Affidavit of Support. Under the current policy, sponsors are not required to find a joint sponsor if they or a member of their household used benefits.

This new provision will deter both immigrants and U.S. citizens from using benefits for which they are eligible if they hope to sponsor or joint sponsor a family member in the future. The vast majority (84 percent) of family-based immigrants are sponsored by U.S. citizens.<sup>1</sup> U.S. citizens, whether native born or naturalized, do not face public benefits eligibility restrictions based on their immigration status. A recent study revealed that in just a single year, three in ten U.S. born citizens received Medicaid, SNAP, SSI, TANF or housing assistance.<sup>2</sup> It also showed that approximately 43 to 52 percent of U.S. born citizens participated in at least one of these programs in a 20-year period from 1997-2017.<sup>3</sup>

We also note that the Children's Health Insurance Program (CHIP), a health coverage program that would make a U.S. citizen ineligible to be a sponsor under the proposed rule, is a program

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<sup>1</sup> DHS, *Yearbook of Immigration Statistics, 2018*, Table 6, <https://www.dhs.gov/immigration-statistics/yearbook/2018/table6>.

<sup>2</sup> D. Trisi, *Trump Administration’s Overbroad Public Charge Definition Could Deny Those Without Substantial Means a Chance to Come or Stay in the U.S.*, Ctr. on Budget & Policy Priorities (May 30, 2019) <https://www.cbpp.org/research/poverty-and-inequality/trump-administrations-overbroad-public-charge-definition-could-deny>.

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



that can include individuals with a range of income levels. Pregnant individuals and children can be eligible for CHIP with incomes as high as 405 percent of the Federal Poverty Level (FPL).<sup>4</sup> In 19 states, the upper income limit of CHIP is greater than 300 percent of the FPL, and in ten states, it is greater than 250 percent of the FPL and is enough income to be a heavily weighted positive factor in the public charge test.<sup>5</sup> DHS asserts that receipt of these benefits is evidence that a sponsor may be unable to maintain income equal to at least 125 percent of the FPL or to maintain their support obligations, but provides no evidence to support this assertion.<sup>6</sup> Further, sponsors who received CHIP benefits within the proposed 36-month review period either did not meet the age requirement for sponsors while they received CHIP coverage or only received coverage for a time-limited period during the pregnancy. These conditions should not be negatively factored in the sponsor's Affidavit of Support assessment.

Immigration policies that create consequences for immigrants and their family members if they use a public benefit create a deterrent effect well outside of those who would be directly affected. Although only a small percentage of non-citizens could be ineligible for green cards based on current benefit use under the 2019 DHS public charge rule, many more immigrants and their U.S. citizen family members have and continue to decline benefits for which they are eligible.<sup>7</sup> In a recent national survey, nearly one in three low-income immigrants and their U.S. citizen family members shared that they are foregoing access to health care and economic supports because of fear of being designated a public charge.<sup>8</sup> An interview with 16 health center leaders in September 2019, found that nearly half (47 percent) reported a decline in

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<sup>4</sup> Kaiser Fam. Found., *Medicaid and CHIP Income Eligibility Limits for Children as a Percent of the Federal Poverty Level* (January 1, 2020) <https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>5</sup> *Id.*

<sup>6</sup> DHS, Affidavit of Support on Behalf of Immigrants, 85 Fed. Reg. 62432 (Oct. 2, 2020) [hereinafter Proposed Rule], at 62457.

<sup>7</sup> R. Capps et al, Migration Policy Institute, *Public Charge Rule: Broad Impacts, But Few Will Be Denied Green Cards Based on Actual Benefit Use* (March 2020), <https://www.migrationpolicy.org/news/mpi-estimates-non-citizens-ineligible-green-cards-based-current-benefit-use>.

<sup>8</sup> One in three *low-income* immigrant families reported foregoing access to public benefits (such as SNAP, Medicaid, CHIP or housing subsidies) out of fear, and one in five of *all* immigrant families - regardless of income - reported foregoing access to programs. Low-income families are more likely to meet the income-eligibility rules for public benefit programs. M. Haley et al., Urban Institute, *One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*, (June 18, 2020), <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>.



Medicaid enrollment by immigrant patients starting in 2018.<sup>9</sup> A recent study published in the Journal of the American Medical Association found that nearly 500,000 people in Texas avoided public programs or medical care in the past year because of concerns with the public charge rule and other immigration-related concerns.<sup>10</sup> A New York University study found that the vast majority of immigrant-serving organizations (97 percent) surveyed reported elevated client fear of seeking human or health-related services.<sup>11</sup> And, uninsured rates among Latino children widened for the first time in a decade in 2018, rising to 8.1 percent compared to 5.2 percent for all children and 4.2 percent for non-Latino children.<sup>12</sup> The chilling effects of the public charge rule change are widespread, with more than 10 million immigrants and 12 million of their U.S. family members potentially affected.<sup>13</sup>

Thus, the proposed rule will add to the confusion and fear already caused by the public charge rule. It will also make it even more difficult for agencies and community-based organizations to educate community members about the potential impacts of public benefits use because the

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<sup>9</sup> Tolbert J et al., Kaiser Fam. Found., *Impact of Shifting Immigration Policy on Medicaid Enrollment and Utilization of Care Among Health Center Patients* (Oct 15, 2019), <https://www.kff.org/medicaid/issue-brief/impact-of-shifting-immigration-policy-on-medicaid-enrollment-and-utilization-of-care-among-health-center-patients>.

<sup>10</sup> B.D. Sommers et al., *Assessment of Perceptions of the Public Charge Rule Among Low-Income Adults in Texas*, JAMA (July 15, 2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768245>.

<sup>11</sup> H. Yoshikawa et al., *Approaches to Protect Children's Access to Health and Human Services in an Era of Harsh Immigration Policy*, NYU Inst. of Human Development and Social Change (2019), [https://steinhardt.nyu.edu/sites/default/files/2019-10/Approaches%20to%20Protect%20Children%27s%20Access%20in%20an%20Era%20of%20Harsh%20Immigration%20Policy\\_0.pdf](https://steinhardt.nyu.edu/sites/default/files/2019-10/Approaches%20to%20Protect%20Children%27s%20Access%20in%20an%20Era%20of%20Harsh%20Immigration%20Policy_0.pdf).

<sup>12</sup> K. Whitener et al., Georgetown University Ctr. for Children and Families, *Decade of Success for Latino Children's Health Now in Jeopardy* (March 2020), <https://ccf.georgetown.edu/wp-content/uploads/2020/03/Latino-Childrens-Health-Care-Coverage.pdf>.

<sup>13</sup> Based on analysis of U.S Census Bureau data, the population that could feel the rule's "chilling effects" and disenroll includes 10 million noncitizens—47 percent of the noncitizen population in the United States. These noncitizens live in families with 12 million U.S.-citizen family members (nearly two-thirds of them children), and chilling effects will extend to their citizen family members. And it will fall particularly hard on the two largest racial/ethnic immigrant groups: Latinos and Asian Americans and Pacific Islanders (AAPI). Approximately 16.4 million people live in benefit-receiving families with at least one Latino noncitizen and 3 million live in such families with at least one AAPI noncitizen. J. Batalova et al., *Millions Will Feel Chilling Effects of U.S. Public Charge Rule That is Also Likely to Reshape Legal Immigration*, Migration Policy Institute (August 2019), <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>.



list of programs that could disqualify an individual from serving as a sponsor is different from the programs taken into account for public charge determinations.

Ambiguity about the meaning of “household member” in this section of the rule will further increase the chilling effect. It is unclear whether DHS intends that the use of benefits by any member of the sponsor’s household would be counted against the sponsor, or only to a household member who executes a “Contract Between Sponsor and Household Member.”

Further, we are dismayed that DHS has chosen this time to introduce a policy that will penalize or deter individuals and their family members from accessing health care, nutrition or other assistance programs they need to stay healthy. Federal agencies should be responding to the urgency and gravity of the COVID-19 pandemic and public health emergency by encouraging people to make sure their families are healthy, fed and safe. We urge strongly that DHS remove this policy of penalizing sponsors for use of benefits.

## **II. The proposed policy’s additional administrative load will lead to higher administrative costs and will add to USCIS’s backlog**

The additional documentary requirements will require USCIS and the Department of State’s National Visa Center (NVC) to review and potentially verify three years of tax returns, in-depth bank account information, and credit history for at least one sponsor, and in many cases the sponsor’s spouse, a joint sponsor, and their spouse.

The proposed rule fails to adequately assess the increased administrative costs needed to review and verify the additional required documents. In 2018, USCIS and the NVC received a total of 1,110,986 I-864 forms alone.<sup>14</sup> If we estimate that USCIS officers or NVC staff require an extra hour of additional time per application, it will result in more than one million additional hours of paperwork review for USCIS per year (1,110,986 hours). If we use the \$37.55 per hour wage rate used in the proposed rule, this amounts to nearly \$42 million in additional annual costs.<sup>15</sup>

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<sup>14</sup> Proposed Rule, *supra* note 6, at 62457. This number is close to the five-year average of 1,041,077 I-864 forms filed per year.

<sup>15</sup> *Id.* at 62460.



In addition, DHS itself estimates that the total new quantified net costs to sponsors for completing the proposed paperwork—Form G-1563, Form I-864, and Form I-864 EZ, obtaining credit reports, obtaining IRS-issued transcripts or certified copies for three years of tax returns and opportunity costs to file—at \$2.4 billion.<sup>16</sup> Thus, it should be no surprise that reviewing and verifying the information provided will also be time-consuming and costly to the Federal government.

These types of documentation requirements have already been proven to be ineffective, difficult to administer, and costly within the Medicaid context. Medicaid is the nation's largest publicly funded health care program. Over 75 million individuals are enrolled in Medicaid and CHIP.<sup>17</sup> When states expanded Medicaid coverage during the late 1980s and early 1990s to cover more children and pregnant individuals with low incomes, Medicaid state agencies took the opportunity to simplify the enrollment process for these eligibility groups as much as possible. For example, many states shortened their application forms and reduced the amount of required documentation for application information, among other simplifications.<sup>18</sup> After the 1996 federal welfare reform law provided states with new authority to set more flexible eligibility rules for families, many states simplified their eligibility and enrollment processes even further.<sup>19</sup> In 2009, Congress again granted states the authority to ease the paperwork burden of Medicaid's citizenship documentation requirement.<sup>20</sup> Nearly every state now uses electronic data matches to verify eligibility criteria, including for income.<sup>21</sup> These changes eased procedural barriers to enrollment and produced significant administrative savings.

Thus, DHS should be removing unnecessary barriers to the adjustment of status process instead of adding them, particularly during a time when USCIS and DOS consular offices are already experiencing backlogs. Before the public health emergency, USCIS's processing

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<sup>16</sup> *Id.* at 62434.

<sup>17</sup> CMS, June 2020 Medicaid & CHIP Enrollment Data Highlights (Sept 30, 2020), <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>.

<sup>18</sup> Kaiser Fam. Found., *Eliminating the Medicaid Asset Test* (2001), <https://www.kff.org/medicaid/report/eliminating-the-medicaid-asset-test-for-families/>.

<sup>19</sup> *Id.*

<sup>20</sup> Donna Cohen Ross, Ctr. on Budget & Policy Priorities, *New Citizenship Documentation Option for Medicaid and CHIP is Up and Running* (Apr. 20, 2010), <https://www.cbpp.org/research/new-citizenship-documentation-option-for-medicaid-and-chip-is-up-and-running>.

<sup>21</sup> Kaiser Fam. Found., *Key Lessons from Medicaid and CHIP for Outreach and Enrollment Under the Affordable Care Act*, <https://www.kff.org/report-section/key-lessons-outreach-and-enrollment-aca-issue-brief/>.



delays had already surged by about 25 percent from the end of Fiscal Year 2017 and 5 percent since the end of Fiscal Year 2018. (And this was despite a 10 percent drop in cases received from the end of FY 17 through FY 19.<sup>22</sup>) With months of USCIS and DOS consular office closures due to the COVID-19 pandemic, these delays are not expected to improve anytime soon.

We oppose DHS's proposal to add additional paperwork requirements for submitting an Affidavit of Support to already-overtaxed federal agencies. Instead, DHS should find ways to make the submission process easier, so that it can catch up on its backlog of cases.

### **III. A sponsor's past income tax returns are not an accurate reflection of their current or future income**

The proposed rule would require all sponsors to provide their last three years of federal income tax returns rather than only their past year's return. Sponsors currently have the option of providing up to their past three years of returns. This option can help sponsors who have recently seen lower earnings or hours or gaps in their work—as millions of Americans are experiencing now during the current pandemic-related recession. But requiring *all* sponsors to provide their past three years of returns will in many cases harm sponsors by slighting their current financial situation and painting a falsely negative portrait of their ability to support the immigrants they are sponsoring.

There are many scenarios where a sponsor's current income does not reflect their reported taxed income. For example, a potential sponsor could be financially able to meet the affidavit of support standards at the time of application, but had significantly lower income the year before due to a short-term layoff at work. A sponsor could have been a student working and earning less while taking on debt, but seeking a degree or credential to gain a promotion or improve their earning prospects. The sponsor could have been on parental leave or could have needed to otherwise take time away from work to care for a child, parent, or other relative. The sponsor could have been seriously ill and unable to work but now fully recovered. Or, the sponsor could have been starting a business that started slowly but is now making a profit. In each of these cases, the income that the sponsors would have reported on their tax returns

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<sup>22</sup> AILA, *Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow* (February 26, 2020) <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

would be significantly lower than their current income. Under the proposed rule, USCIS could use that lower income to determine that the sponsors cannot adequately support the sponsored immigrant even if the sponsors' current and prospective income would be adequate.

Again, the experiences from the Centers for Medicare & Medicaid Services (CMS) and states regarding the administration of Medicaid, the Children's Health Insurance Program (CHIP), and the Health Insurance Marketplaces can be instructive. When CMS and the states began to enroll individuals in the Marketplaces, some consumers had difficulty estimating their annual incomes. Many of these individuals had variable incomes due to shift work, seasonal work, time off needed for child/elder care, or a host of other reasons. When some of these individuals tried to enroll in Marketplace coverage, there were data inconsistencies and errors with verifying income. Even income data from trusted federal data sources can be 1-2 years old. Thus, sponsors who have received an increase in their income within the previous year will likely have to wait to complete their Affidavit of Support or find a co-sponsor due to outdated prior information.

For many of these sponsors, waiting another year or two to sponsor their relative in order to put their period of lower income further behind them will not work. And, in addition, the timing of immigrant visas available for family preference immigrants is highly variable. For example, unmarried sons and daughters of U.S. citizens from Mexico who applied for immigrant visas by February 22, 2000 (known as their "priority date") are currently being processed for immigrant visas 20 years later, and people who filed by July 22, 2015 from China are currently being processed. Filing fees and the affidavit(s) of support would then need to be filed within one year after their "priority date." Delays also put children at risk of aging out of eligibility as either immediate relatives or derivative beneficiaries. Aging parents would go without the care and comfort of a sponsoring son or daughter. Sponsors who are building family-run businesses may struggle without the trusted labor and skill that siblings and other relatives could provide. And spouses who have committed to sharing their lives together remain separated. Sponsors in these cases would have worked and waited long enough to regain financial stability. They should not be required to wait even longer to satisfy an unnecessary and arbitrary timeframe set by USCIS.

While DHS provides the option to submit additional documentation to show proof of income, the additional burden of preparing the paperwork needed to prove income will likely dissuade some sponsors from petitioning for their family member. In addition, requiring some sponsors





to secure a joint sponsor is unnecessary and only creates additional administrative barriers. These sponsors are fully capable of supporting their relatives by themselves *now*. They should not need to turn to another person to meet their support obligation—and should not need to ask that other person to take on the legal responsibility that joint sponsorship entails.

#### **IV. Requiring in-depth bank account information from all sponsors is neither relevant nor necessary**

DHS proposes to add a new requirement to the Form I-864 and related Forms I-864A and I-864EZ that would require U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card to provide in-depth bank account information. Specifically, sponsors (and household members whose income and/or assets are being used by a sponsor to qualify) would be required to provide the name of the banking institution, the number of the bank account, the routing number of the account, and the account holder's name. Co-sponsors will be required to provide the same information, which, combined with the proposed I-864's ominous warnings about sponsor reimbursement and sweeping release of information, will make it extremely difficult for petitioning family members to obtain co-sponsors.

There is no legal authority for USCIS to require this information from all U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card. Further, DHS provides no reasonable justification for the massive documentary burdens and invasion of privacy that will result from requiring all sponsors and household members to provide information about their bank accounts. Bank account information is not necessary or even relevant in order to verify the sponsor or household member's income. This can be done through the submission of federal income tax returns, W-2 wage and tax statements, and letters of employment. In some limited circumstances where the sponsor is using assets—specifically money in a bank account—to satisfy the 125 percent of the federal poverty guidelines, sponsors are already required to provide evidence of those assets by submitting copies of bank statements.

Moreover, this new requirement raises significant privacy concerns. In today's environment where cybercrime and identity theft are becoming more rampant, requiring all sponsors to disclose detailed bank account information, particularly when it is not even relevant or necessary, exposes them to heightened risk of becoming an identity crime victim. The inclusion of full bank account information is an invitation for financial fraud by anyone able to obtain a copy of the I-864, including sponsored former spouses and the staff of benefits



agencies, who would no longer be required to obtain a subpoena to pursue an enforcement action against the sponsor under the proposed rule.<sup>23</sup> A fundamental principle of data privacy is that data should not be collected or stored unless it is needed for a specific purpose. Individuals with close connections to countries with high levels of government corruption may be particularly concerned about sharing this information with a government agency.

#### **V. Relying on credit history as a factor has a disproportionate impact on immigrants and naturalized citizens**

Relying on credit history as a factor in Affidavit of Support determinations has a disproportionate impact on communities of color, including immigrants and naturalized citizens. Today's credit scoring system was built upon a credit market that discriminates against people of color and penalizes borrowers for using the type of credit disproportionately used by people of color. Our nation has a history of explicitly excluding communities of color from low-cost and mainstream loans.<sup>24</sup> Banks, appraisers, real estate agents, and others perpetuated redlining and predatory lending practices, disproportionately steering communities of color to high-cost products.

Further, neither credit reports nor credit scores were designed to provide information on whether a consumer is more or less likely to maintain his or her income in the future. Nor are credit reports and scores any indication of whether the sponsor will be able to maintain the sponsored immigrant at the required federal poverty income level for the household size. Credit reports and credit scores are designed to have a very narrow and specific purpose: whether a borrower will become 90 days late on a credit obligation. A bad credit report or low score—or even the lack of one—is not a reliable predictor of the likelihood that a sponsor will fail to provide necessary financial support to that applicant. A bad credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.<sup>25</sup>

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<sup>23</sup> Proposed Rule, *supra* note 6, at 62447.

<sup>24</sup> Lisa Rice & Deidre Swesnik, National Fair Housing Alliance, *Discriminatory Effects of Credit Scoring on Communities of Color* (June 2012), <https://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf>.

<sup>25</sup> Chi Chi Wu, National Consumer Law Center, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession* (2013), [www.nclc.org/images/pdf/credit\\_reports/report-credit-conundrum-2013.pdf](http://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf).



Moreover, credit scores do not take into consideration many of the day-to-day expenses that sponsors and household members incur and meet. For example, utility and rent payments, typically a family's largest recurring expense, when paid on time does not help build an individual's credit score. Savings and checking accounts are not listed on credit reports from the big three credit bureaus because no borrowing or debt is involved. Credit reports and credit scores do not take these transactions into account and thus do not provide an accurate view of a sponsor's financial history. Only sponsors and household members who have had a credit card, bank loan, unpaid bills in collection, mortgage, or bankruptcy are likely to have a credit report from one of the three major credit bureaus. As of 2010, approximately 15 percent of Black and Hispanic consumers, compared to an estimated 10 percent of their White counterparts, are "credit invisible," meaning these consumers are without credit records.<sup>26</sup> Even when consumers have credit scores, reports may have errors, which are difficult to correct, and lower consumers' score. According to a study conducted by the Federal Trade Commission, one in five people have an error on at least one of their credit reports.<sup>27</sup>

## **VI. The Department fails to adequately evaluate the impacts of the proposed regulation**

The Department does not provide a rigorous qualitative discussion or reliable quantitative estimates of the proposed rule's overall impact, making it impossible for the public to understand and comment on the justification of the regulation or its effects. As explained above, DHS inadequately evaluates the added administrative costs of the proposed rule. DHS also leaves out considerable impacts in its analysis of the rule's costs and benefits.

According to the Office of Management and Budget's primer that summarizes what is involved in a cost-benefit analysis as required under Executive Order 13563, Executive Order 12866, and OMB Circular A-4, agencies must produce:

an estimate of the benefits and costs —both quantitative and qualitative—of the proposed regulatory action and its alternatives: After identifying a set of potential

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<sup>26</sup> Consumer Financial Protection Bureau, *Credit Invisibles* (May 2015), [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf).

<sup>27</sup> Federal Trade Commission, *Press Release: In FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans* (Feb. 2013), <https://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports>.



regulatory approaches, the agency should conduct a benefit-cost analysis that estimates the benefits and costs associated with each alternative approach. The benefits and costs should be quantified and monetized to the extent possible, and presented in both physical units (e.g., number of illnesses avoided) and monetary terms. When quantification of a particular benefit or cost is not possible, it should be described qualitatively. The analysis of these alternatives may also consider, where relevant and appropriate, values such as equity, human dignity, fairness, potential distributive impacts, privacy, and personal freedom. The agency's analysis should be based on the best available scientific, technical, and economic information. To achieve this goal, the agency should generally rely on peer-reviewed literature, where available, and provide the source for all original information. In cases of particular complexity or novelty, the agency should consider subjecting its analytic models to peer review. In cases in which there is no reliable data or research on relevant issues, the agency should consider developing the necessary data and research.<sup>28</sup>

DHS has completely failed to meet this regulatory standard. Among the Department's most glaring omissions is an adequate analysis of the regulation's chilling effect on program participation and reduction in immigration benefits.

In the preamble, the Department recognizes that the proposed regulation:

... could result in some sponsors and joint sponsors who may intend to sponsor a family member in the future forgoing enrollment or disenrolling from a means-tested public benefits programs to avoid triggering the proposed additional requirements. This could result in additional indirect impacts incurred from the change of the behavior due to this proposed rule.<sup>29</sup>

Despite acknowledging this chilling effect, the Department does not provide estimates of the number of individuals and their family members who may forgo or disenroll from public benefits or analysis of the downstream economic implications of these chilling effects on health care providers, state and local governments, or small business.

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<sup>28</sup> Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer*, [https://reginfo.gov/public/jsp/Utilities/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](https://reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf).

<sup>29</sup> Proposed Rule, *supra* note 6, at 62454.

DHS has recognized the harmful consequences of chilling effects in recent rulemaking. In the preamble of the Department's Inadmissibility on Public Charge Grounds proposed regulation, DHS acknowledged that disenrollment or foregoing enrollment in public benefits programs could lead to:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.<sup>30</sup>

In this proposed rule, however, DHS fails to even recognize the harmful consequences of the proposed regulation's chilling effects and does not evaluate the extent of these harmful outcomes and its costs to society. This is true even though there are rigorous studies that have assessed the benefits of program participation that could be used to measure the costs of the chilling effects. For example, research has found that expanding Medicaid eligibility for children increases college enrollment, lowers mortality, and increases the amount individuals pay in taxes.<sup>31</sup> Studies have also found that every state dollar spent on prenatal care saves states between \$2.57 and \$3.38 in future medical costs.<sup>32</sup> Similarly, spending on SNAP for seniors has been shown to reduce hospitalization costs.<sup>33</sup> Thus, policies such as the proposed

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<sup>30</sup> DHS, Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51114 (Oct. 10, 2018), at 51270.

<sup>31</sup> David W. Brown et al., *Long-Term Impacts of Childhood Medicaid Expansions on Outcomes in Adulthood*, Yale University Department of Economics (June 2018), <http://www.econ.yale.edu/~ak669/medicaid.latest.draft.pdf>.

<sup>32</sup> R.D. Gorsky & J.P. Colby Jr., *The Cost Effectiveness of Prenatal Care in Reducing Low Birth Weight in New Hampshire*, HEALTH SERV. RES. (Dec 1989), <https://pubmed.ncbi.nlm.nih.gov/2511163/>. See also Committee to Study the Prevention of Low Birthweight, Division of Health Promotion and Disease Prevention, Institute of Medicine, *Preventing Low Birthweight* (Jan 1985), <https://www.ncbi.nlm.nih.gov/books/NBK214468/ doi: 10.17226/511>.

<sup>33</sup> Laura Samuel et al., *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization? The Case in Maryland*, POP. HEALTH MANAG. (Apr 2018), <https://pubmed.ncbi.nlm.nih.gov/28683219/>.



Affidavit of Support rule, which will discourage participation in public programs and/or have a likelihood of creating fear and confusion that chills program participation, must be evaluated for these impacts.

Additionally, DHS does not adequately assess the immigration impacts of the proposed regulation. In the preamble, DHS admits that “there could be a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to obtain a sponsor who can meet the new requirements under this proposed rule.”<sup>34</sup> However, the Department fails to provide any estimate of the reduction in the number of people granted an immigration benefit, or any analysis of this immigration impact on potentially affected individuals, their families and communities, their employers, or society as a whole. DHS’ acknowledgement of this reduction is also an acknowledgement of that some U.S. citizen and lawful permanent resident sponsors will not be able to reunite with their family member(s).

Ultimately, the failure of DHS to adequately evaluate the proposed regulation makes it impossible to for the public to assess the potential effects of the regulation on our nation, and therefore should not be implemented.

## **VII. The proposed rule is the Administration’s latest attempt to limit family-based immigration.**

The proposed rule will exacerbate already heightened fears within immigrant communities and will deter family members and others from serving as sponsors. As drafted, the proposed rule will ultimately reduce family-based immigration.

As outlined earlier in our comments, the proposed rule would require sponsors to complete burdensome paperwork requirements, make sponsors fear enrollment in health care programs and other public benefits, allow sensitive personal information to be shared without a subpoena, and potentially subject them to financial fraud. In the preamble, DHS itself acknowledges multiple times that the new policy could cause a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to submit a sufficient Affidavit.<sup>35</sup> The Department also indicates that provisions of the proposed rule would likely reduce the number of individuals who would be eligible to qualify as sponsors

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<sup>34</sup> Proposed Rule, *supra* note 6 at 62454.

<sup>35</sup> *Id.* at 62468, 62454, 62453.



who may execute an Affidavit and, as a result, lead to a reduction in the number of Affidavits executed using Form I-864.<sup>36</sup>

The Administration has repeatedly attempted to restrict lawful family-based immigration to the U.S. When Congress rejected its proposal to implement a points-based system to limit family-based immigration, it pivoted to a series of efforts to achieve this goal through other means. For example, advisor Stephen Miller acknowledged to supporters that the temporary limits on family-based immigration imposed this spring, supposedly imposed to control COVID-19, were in reality the first step of an overall plan to restrict family-based immigration.<sup>37</sup>

Instead of creating more red tape, fear, and logjams in the immigration process, we should support family members and close contacts who want to step forward in support of the legal immigration process by serving as a sponsor.

## VIII. Conclusion

If implemented, the proposed rule would deter sponsors from playing a critical role that permits family members and close contacts to adjust status, ultimately reducing the number of immigrants who are able apply for and receive green cards.

NHeLP opposes the Affidavit of Support proposed rule. Our comments include citations to supporting research and documents for the benefit of DHS in reviewing our comments. We direct DHS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed rulemaking.

Thank you for the opportunity to submit comments on the proposed rule. Please contact Priscilla Huang at [huang@healthlaw.org](mailto:huang@healthlaw.org) with questions or if you need any further information.

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<sup>36</sup> *Id.* at 62432.

<sup>37</sup> Michael D. Shear & Maggie Haberman, *Trump's Temporary Halt to Immigration Is Part of Broader Plan, Stephen Miller Says*, NY TIMES (Apr. 24, 2020), <https://www.nytimes.com/2020/04/24/us/politics/coronavirus-trump-immigration-stephen-miller.html>.



Sincerely,



Priscilla Huang  
Senior Attorney





