



December 6, 2018

**Sent via Electronic Submission at <https://www.regulations.gov>**

Samantha Deshommes, Chief  
Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue N.W.  
Washington, DC 20529-2140

**RE DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds**

Dear Ms. Deshommes:

The National Education Association (“NEA”) submits the following comments in response to the October 10, 2018 notice by the Department of Homeland Security (“the Agency”) of its proposed rule setting forth new “public charge” grounds for inadmissibility. NEA strongly opposes the proposed rule, as it will diminish children’s access to adequate nutrition, reliable health care, and stable housing. This cruel result will do lasting damage to children’s emotional wellbeing and ability to learn.

NEA’s more than three million members—comprised of teachers, school nurses, counselors, and education support professionals—know well the particular vulnerability of children. Every day, NEA members engage face-to-face with K-12 students in our nation’s public schools. The children who come to school without breakfast, who miss class because of an untreated illness, or go absent as their families move from place to place—these are our members’ students. Both NEA and our members know the obstacles they face. The proposed rule would only worsen these students’ chances of academic success.

We strongly urge the Agency to withdraw the proposed rule in its entirety.

For close to a century,<sup>1</sup> U.S. immigration law has used the term “public charge” to mean a person *primarily* dependent on the government for subsistence.<sup>2</sup> The proposed rule vastly expands this definition to include individuals who simply receive one of the enumerated nutrition, health care, or housing benefits. The public charge designation has a profound effect on immigrant families, for it can bar an individual from entry to the U.S. or disqualify an applicant from legal permanent residency (“LPR”). By attaching extraordinary immigration penalties to such a wide range of vital benefits, the proposed rule would cause families to forego food, health, or housing benefits out of fear that receiving them would jeopardize the legal presence and family unity provided by a visa or LPR status. This will have a direct and harmful effect on children’s wellbeing.

What is more, even families whose immigration status would be unaffected by the proposed rule will be deterred from seeking access to nutrition, health care, and housing programs. For example, when a major overhaul of federal welfare law in 1996 rendered immigrants—but not their U.S. citizen children—ineligible for federally-funded benefits, more than half of the U.S. citizen children with an immigrant parent nonetheless dropped from the food stamps program.<sup>3</sup> The legislation’s “chilling effect was enormous.”<sup>4</sup> The Agency’s proposed rule would similarly trigger widespread, unnecessary, and harmful loss of support for children.<sup>5</sup> In fact, the chilling effect of the proposed rule has already begun to take hold. Agencies in at least eighteen states have already reported enrollment drops of up to twenty percent in the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”)<sup>6</sup> despite the fact that WIC is not included in the proposed rule.

Educators can readily attest to the effects of inadequate nutrition, a lack of routine medical care, and destabilized living situations on students. These factors contribute to disruptive behavior, inattention in class, absenteeism, and incomplete work. In other words, a marked

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<sup>1</sup> Kelly Whitener, *What Does Public Charge Mean for Immigrant Families?*, GEORGETOWN UNIV. CTR. FOR CHILDREN & FAMILIES, May 2, 2018, <https://ccf.georgetown.edu/2018/05/02/what-is-public-charge-and-what-does-it-mean-for-immigrant-families/>.

<sup>2</sup> Under current policy, one is only “primarily dependent” on the government for subsistence if he or she obtains more than 50% of his or her income from either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense. *See, e.g.*, Department of Justice, Immigration & Naturalization Serv., Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999).

<sup>3</sup> Dara Lind, *Trump is Proposing a Regulation that Could Change the Face of Legal Immigration — by Restricting Low-income Immigrants*, VOX, Sept. 24, 2018, <https://www.vox.com/2018/9/24/17892350/public-charge-immigration-food-stamps-medicaid-trump>.

<sup>4</sup> *Id.*

<sup>5</sup> Jonathon Blitzer, *Trump’s Public-Charge Rule Is a One-Two Punch Against Immigrants and Public Assistance*, THE NEW YORKER, Sept. 24, 2018, <https://www.newyorker.com/news/dispatch/trumps-public-charge-rule-is-a-one-two-punch-against-immigrants-and-public-assistance>.

<sup>6</sup> Helena Bottemiller Evich, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs*, POLITICO, Sept. 4, 2018, <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

decline in the quality of education follows, for both directly affected students and their peers. The proposed rule would drastically increase these barriers to education and development.

For example, public health insurance coverage positively impacts education attainment.<sup>7</sup> Research shows that such coverage, which is mainly available through Medicaid, increases high school graduation rates.<sup>8</sup> Without Medicaid, families will be forced to delay doctors' visits, skip immunizations, and forego prescriptions. Forced choices like these sicken entire classrooms and learning falls behind.

The threats to food security and health care are only compounded by the inclusion of housing assistance in the proposed rule. When children are in an unstable housing environment, their education suffers.<sup>9</sup> The loss of federal housing assistance will increase the risk of students living in unsafe, overcrowded, and unstable housing. Housing instability, coupled with other stressors, results in high levels of parental stress that can harm children's cognitive development and lower educational attainment.<sup>10</sup>

While parents do their best to shield their children from these realities, children inevitably absorb the stress as well. Severe parental stress of this kind affects a child's brain development and capacity to learn.<sup>11</sup> The proposed rule would only increase the risk that children will experience this often-irreversible harm.<sup>12</sup> Both parents and pediatricians report that children are

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<sup>7</sup> Sarah Cohodes et al., *The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions* 4, 5 & 23 (Nat'l Bureau of Econ. Research, Working Paper No. 20178, 2014), available at <https://www.nber.org/papers/w20178>.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> See, e.g., Press Release, U.S. Department of Education, Education Department Releases Guidance on Homeless Children and Youth (Jul. 27, 2016), available at <https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth>; U.S. Dep't of Educ. & U.S. Dep't of Health and Human Servs., Dear Colleague Letter: Elementary and Secondary Education Act (June 23, 2016), available at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>.

<sup>10</sup> HIROKAZU YOSHIKAWA, IMMIGRANTS RAISING CITIZENS UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 23-24 (2011); Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis* 28-32 (Urban Inst., Low-Income Working Families, Discussion Paper No. 3, 2013), available at <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

<sup>11</sup> National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development* (Ctr. on the Developing Child at Harvard U., Working Paper No. 9, 2010), available at <http://www.developingchild.net/>; Maya Rossin-Slater, *Promoting Health in Early Childhood*, 25 THE FUTURE OF CHILDREN 35 (2015).

<sup>12</sup> See, e.g., American Academy of Pediatrics, *Policy Statement on Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health*, 129 PEDIATRICS e224, e225 (2012); National Scientific Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development* (Ctr. on the Developing Child at Harvard U., Working Paper No. 9, 2010), available at <http://www.developingchild.net/>.

experiencing high levels of fear related to current immigration-related policies and rhetoric, which are negatively affecting their behavior and performance in school.<sup>13</sup>

NEA believes that all children deserve the fundamental security provided by adequate food, health care, and housing. It is only with such supports in place that students can meaningfully engage at school and reach their greatest potential. For all of the above reasons, we urge you to withdraw this harmful proposed rule in its entirety.

Sincerely,

/s/

Alice O'Brien  
General Counsel  
National Education Association

/s/

Emma Leheny  
Senior Counsel  
National Education Association

/s/

Gypsy Moore  
Civil Rights Law Fellow  
National Education Association

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<sup>13</sup> Samantha Artiga & Petry Ubri, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, KAISER FAMILY FOUNDATION, Dec. 13, 2017, available at <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>.