Michigan Coalition for Immigrant and Refugee Rights
c/o Susan Reed
Secretary, Steering Committee
3030 S. 9th St. Suite 1B
Kalamazoo, MI 49009

December 7, 2018

Samantha Deshommes
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security VIA REGULATIONS.GOV
20 Massachusetts Avenue NW
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:

I am writing on behalf of the Michigan Coalition for Immigrant and Refugee Rights in response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds," which was published in the Federal Register on October 10, 2018.

Since our founding in 1987, the mission of the Michigan Coalition for Immigrant and Refugee Rights (MCIRR) has been to coordinate educational and organizational efforts that build capacity within Michigan's immigrant advocacy community; support immigrants' rights in federal, state, and local policy; and promote a more positive and inclusive atmosphere for immigrants and refugees in Michigan. We are a membership organization made up of more than seventy (70) Michigan-based nonprofit, faith, and educational organizations who share this mission. A list of our members is attached as Appendix A.

MCIRR has extensive expertise in both the lived experience of the immigrant communities represented among our member organization and in the immigration law because of our many nonprofit legal services provider members. Our nonprofit immigration legal services member organizations' staff include at least 35 attorneys who have devoted their careers to representing low-income immigrants in immigration matters and approximately fifteen United States Department of Justice (USDOJ) Accredited Representatives who do the same in communities across our state. The resumes of our current steering committee members are attached -- please note the deep experience in family-based and humanitarian immigration law that is reflected in our leadership. We frequently host legal trainings and workshops to support the growth and development of our advocacy community, including a biannual summit regularly attended by more than 200 advocates from across the State of Michigan and numerous elected officials who seek to learn more about Michigan's immigrant communities.

Michigan is in a unique economic and social position as the only state to have lost population in the 2010 census. The City of Detroit and other urban areas face economic challenges that immigrants' skills, experiences, and entrepreneurial energy can complement. For example, the 2008 Global Detroit Study illuminated the unexplored potential of southeast Michigan's immigrant communities and served as a basis for launching the Global Detroit initiative. Research uncovered a broad range of evidence about the contributions that immigrants make to the region's growing high-tech sector, entrepreneurship, talent needs, diversity, and reinvestment in Detroit and urban neighborhoods, as well as the importance of immigration to the long-term labor needs in a rapidly aging state with stagnant economic growth. The Global Detroit Study was guided by an Advisory Board of 35 business, new economy, philanthropic, academic, ethnic chamber, labor, and community leaders. The Study was housed at the Detroit Regional Chamber of Commerce and focused in economic development potential for the region. We urge you to consider all of the findings the study, attached as Appendix B, particularly the findings with respect to its recommendations regarding increasing access to immigration legal services and other human and social services.

In rural areas, Michigan's immigrants, including many family based immigrants who would be severely harmed by the proposed public charge rule, are critical to the fabric of communities and the agricultural economy. Our members' communities include many agricultural workers and family members of agricultural workers seeking adjustment of status and admission as Lawful Permanent Residents in the family-based immigration system. Consider Michigan's large specialty crop industry which includes a great number of specialty hand harvest crops in the report attached as Appendix C. Michigan has unique agricultural workforce needs that are overwhelmingly met by immigrant workers, and excluding large numbers of lower-wage high-value agricultural employees from the ability to gain permanent legal status or sponsor family members would harm not only those workers, but the whole industry. Michigan's farmworker families are so clearly pursuing self-sufficiency to the greatest possible degree: they travel hundreds of miles to find work each year. But, they need to access certain supports to ensure their health and their children's safety. That access is already challenged and limited by a variety of factors. We urge you to fully consider the *2010 Michigan Department of Civil Rights Report on the Conditions of Migrant and Seasonal Farmworkers* and subsequent updates to the report, attached as Appendix D, to fully understand the context for these families and the way that the means-tested public-benefits related portions of the proposed rule as well as the new income requirements in the rule would harm these hard working families and reduce their self-sufficiency.

We strongly oppose the proposed changes to the public charge rules, which, as we know from our years of experience in immigration law and training immigration professionals on complex legal matters, will cause uncertainty, inconsistency, and chaos in the adjudication of immigration benefits and a chilling effect in applying for immigration benefits. We urge that the proposed rule be withdrawn. It stands in stark contrast to our country's commitment to family reunification and facilitating the inclusion and integration of immigrants into the United States. Because we are a diverse coalition of organizations dedicated to advancing the interests of immigrant and refugee communities, we will look at a wide scope of issues raised by the rule. Below, we consider both its impact on the adjudication of immigration cases in a variety of

contexts as well as the proposed rule's impact on the lives of our immigrant members and member organizations.

I. Impact on USCIS Adjudications

A. Implementation of the Proposed Rule Would Consume Significant U.S. Citizenship and Immigration Services (USCIS) Resources and Deepen Delays in Immigration Benefit Form Processing

The proposed rule would create overwhelming administrative burdens for USCIS. For example, among other challenges, it would require adjudicators to make a multi-factor, complex determination in a very short time frame with limited resources in connection with an estimated 382,264 adjustment of status applications annually and process the new Form I-944, Declaration of Self-Sufficiency. In our experience, even the current, much simpler by comparison public charge analysis is challenging for adjudicators, results in frequent delays and unnecessary requests for additional evidence, fundamental misunderstandings of exceptions to the Affidavit of Support Requirements, and other administrative errors. The new rule would also require public charge assessments of an estimated 511,201 applications for extension or change of nonimmigrant status each year. These overwhelming demands would be placed on an agency that already struggles to address its mandate. With nearly 6 million pending cases as of March 31, 2018, DHS itself has admitted that USCIS lacks the resources to timely process existing filings.[1] In fact, processing times for many of the agency's product lines have doubled in recent years.[2]

Processing delays create instability in the lives of immigrants and their U.S. citizen families. Long wait times can result in applicants losing their jobs, thus depriving their families—including families with U.S. citizen children—of income essential to necessities like food and housing.[3] When immigrants must wait abroad, they often lose income creating a self-fulfilling prophecy with respect to the presumed lack of self-sufficiency in the proposed rule.

B. The Proposed Rule Would Establish an Incoherent Adjudicative Framework Resulting in Inconsistent and Unfair Public Charge Determinations

The proposed rule would replace the current, simpler public charge guidelines with a hazy framework that would make fair and consistent public charge determinations impossible. Under

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[1] USCIS Webpage, "Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter" (Jul. 17, 2018); https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY18Q2.pdf.DHS, "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security" (Apr. 13, 2018); https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf.

[2] *See* USCIS Webpage, "Historical National Average Processing Time for All USCIS Offices" (up to Jul. 31, 2018); https://egov.uscis.gov/processing-times/historic-pt.

[3] *See* AILA, "Deconstructing the Invisible Wall" (Mar. 19, 2018); http://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall.

current policy, a sufficient Form I-864, *Affidavit of Support*, demonstrating a commitment from a sponsor to support the immigrant at the legally required levels, generally establishes to USCIS's satisfaction that, under the totality of circumstances, an individual will not become a public charge. This adjudicative framework and the adjudication process could be improved significantly, but it is based on a standard that ultimately yields relatively predictable, consistent public charge assessments. It allows us to counsel clients about their eligibility for immigration benefits with a relative degree of certainty.

The proposed rule would replace this policy with an amorphous test requiring adjudicators to weigh a potentially unlimited number of "factors" and apply a host of unclear "considerations," without meaningfully distinguishing "factor" from "consideration" and often referring to specific criteria as both a factor *and* a consideration. Moreover, it appears that a factor's weight could shift based on a variety of circumstances and that factor's relationship with one or more factors. DHS seems to be indicating that even some factors not specifically identified "may be weighted heavily." That is to say, not only would there exist an unknown and possibly infinite universe of factors that adjudicators could assess, it appears that adjudicators could find virtually *any* circumstance ultimately dispositive within the totality of circumstances in a given public charge determination. This paves the way for serious abuse of discretion and arbitrary and capricious outcomes in a matter of gravest importance to immigrants and their families.

If public charge determinations inevitably vary wildly from adjudicator to adjudicator and case to case, with similarly situated applicants receiving contrary decisions, appeals will increase, further tying up limited agency resources. Appellate adjudicators are not provided with any meaningful direction by the proposed rule and will similarly grasp for clarity and consistency. An unclear public charge standard opens the door for bias and corruption to creep in with limited recourse for those harmed in the form of administrative appeals or judicial review.

C. The Proposed Bond Procedures and Penalties are Exceptionally Harsh and Create an Opportunity for Unscrupulous Private Bond Companies to Exploit Immigrant Families

There is a "bond" provision in the proposed rule which establishes an excessive bond minimum of $10,000 and also authorizes USCIS to set a dramatically higher bond in its discretion—with no cap—and bars any appeal of that amount. Once again, basic principles of fairness and basic procedures designed to promote consistency and confidence in the law are abandoned. The rule stipulates that the penalty for *any* bond breach is the full bond amount and that *any* use of a specified public benefit while the bond remains in effect constitutes such a breach. This is a particularly serious penalty because the bond provisions would remain in effect following adjustment of status to Lawful Permanent Resident when more significant numbers of LPRs begin to establish eligibility for programs like Medicaid and SNAP. (Note that the proposed rule does not change eligibility for the programs to limit the eligibility of those who could face immigration consequences. It's simply a trap.)

The vital nature of immigration status could drive many noncitizens to accept crippling surety bond terms to avoid family separation. Given the need to actually produce the cash for the bond to be held by the Department of Homeland Security, the great length of time during which the

bond could be held, and the unclear nature of the risk posed by the new rule, traditional surety bondsmen would need to develop new and higher-cost practices to even begin to satisfy their own sources of credit and operate in the field. However, typically, a bond "principal"—in many cases the noncitizen —would have to pay the bond company up to 15 percent of the bond up front even in the current market. This alone could prove destabilizing for low and moderate-income families. For example, for a family of four with an annual income of $31,000—representing 125% of the U.S. Federal Poverty Guidelines—15% of even the minimum bond amount of $10,000 could mean foregone rent and meals. Creating new forms of debt to unpredictable creditors hinders rather than promoting a family's ability to become self-sufficient.

If a public charge bond were breached, a principal would have to reimburse a bond company for the full amount of the breach penalty. For instance, if a $30,000 public charge bond is in effect for a noncitizen mother who then uses only $1,500 worth of public benefits, the bond would be breached and she would be liable for the entire $30,000—20 times more than what she received in benefits—and she would face potential separation from her family. Again, this kind of penalty is completely inconsistent with any intent to promote self-sufficiency for immigrants or their families.

D. The Proposed Rule to Require a Public Charge Assessment of Applicants to Extend/Change Status Is Unnecessary and a Waste of USCIS Resources

Our members handle a wide variety of immigration cases, including a great deal of nonimmigrant visas. Under the proposed rule, USCIS would have to conduct new public charge assessments of an estimated 511,201 applicants seeking an extension or change of their nonimmigrant and temporary status each year. In every case, USCIS could request a Form I-944 Declaration of Self-Sufficiency. This would essentially duplicate work already done by the Department of State (DOS) and U.S. Customs and Border Protection (CBP) but would, again, almost certainly lead to the kind of inconsistent results and unpredictability that make the United States a less desirable destination to foreign students, workers, and business visitors whose participation is essential to our economy. Consular offices are already conducting public charge assessments of these same nonimmigrants and CBP also conducts an admissibility determination at ports of entry.[4]

In addition, many nonimmigrant classifications require the applicant to further prove they can support themselves financially. F-1 and M-1 students, for example, must provide evidence of "sufficient funds available for self-support during the entire proposed course of study."[5] B-1 and B-2 tourists also need to show that they have adequate means of financial support during the course of their stay in the U.S.[6] Meanwhile, by definition, most employment-based nonimmigrant visas mandate sponsorship and compensation by employers. Financial stability is therefore already widely built into most nonimmigrant visa categories. Given these existing safeguards, any investment of USCIS resources to assess nonimmigrants on public charge would be a duplicative and wasteful administrative burden assumed by an already overstretched agency.

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[4] *See* 9 FAM 302.8; https://fam.state.gov/fam/09fam/09fam030208.html.
[5] USCIS, Students and Employment (Feb. 6, 2018); *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.
[6] DOS, Visitor Visa, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html.

II. Impact on Immigration Court Proceedings

A. The Proposed Rule Would Compound the Immigration Court Backlogs and Create Inconsistencies in the Adjudication of Adjustment of Status in Immigration Court

Although immigration judges are not bound by DHS rules, the Department of Justice (DOJ) is in the process of creating a public charge rule that is likely to parallel the DHS proposed rule.[7] However, until a DOJ rule is finalized, the DHS proposed rule is likely to be used as persuasive authority by immigration judges tasked with making public charge assessments. This will occur in at least three scenarios: (1) individuals without lawful status seeking to adjust status in removal proceedings; (2) returning lawful permanent residents who are treated as applicants for admission under INA § 101(a)(13)(C); and (3) lawful permanent residents placed in removal proceedings who are seeking to re-adjust status with a waiver under INA § 212(h). Adjudication of adjustment of status applications will also likely increase due to a 2018 policy change at USCIS under which notices to appear will be issued in any case in which USCIS issues a denial and the applicant has no legal status if denied. This will result in an increase of adjustment of status applications in front of an immigration judge, increasing the frequency of cases requiring a public charge adjudication.

Until a DOJ rule is promulgated, Immigration and Customs Enforcement (ICE) trial attorneys, who *are* bound by DHS regulations, will likely argue that immigration judges should apply the proposed rule's heightened standards. Lacking any binding precedent on the interpretation of INA § 212(a)(4), some immigration judges will agree and will rely on the proposed rule as a guide, while other immigration judges will not.[8] This will create inconsistencies in adjudication that will increase administrative inefficiencies through additional appeals and motions. Cases that are before judges that rely on the DHS framework for assessing public charge will take significantly more court time, due to the heightened evidentiary requirements and need additional and more detailed testimony. These heightened evidentiary requirements will also impact ICE attorneys, who will be required to review that evidence and prepare a response, as well as the respondent and his or her counsel, if represented.

With an immigration court backlog that is already above 750,000 cases,[9] the public charge rule would further exacerbate an already record high case volume. Increased evidentiary requirements, heightened scrutiny, and uncertainty as to what standard to apply will delay

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[7] *See* DOJ Fall 2018 Unified Agenda, available at: https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1125-AA84

[8] The Board of Immigration Appeals (BIA) has not issued any precedent decisions interpreting public charge since Congress amended those provisions in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act.

[9] TRAC Immigration, Immigration Court Backlog Surpasses One Million Cases, Nov. 6, 2018 *available at* http://trac.syr.edu/immigration/reports/536/#f1.

adjudications, add to the backlog, and result in inconsistent court adjudications. Our Detroit immigration court is no exception.

III. Impact on Consular Processing

In January 2018, DOS implemented significant changes to the Foreign Affairs Manual (FAM) that changed the adjudication of the public charge ground of inadmissibility for immigrant visa applicants. The shift has already resulted in improper and arbitrary denials on public charge grounds, keeping individuals who had relied on the best information available to their lawyers and representatives separated from their families indefinitely. Even worse, the denials have resulted in revocations of applicants already-approved I-601A waivers. Even with additional evidence to overcome a determination of inadmissibility based on public charge, individuals have had to resubmit new I-601 waivers to replace the revoked I-601As -- that process can last longer than a year, creating incredible financial and emotional hardship for applicants who expected to be abroad no more than a few weeks.[10]

The proposed rule would dramatically increase these scenarios. DOS has said that it could make changes to its own new public charge guidance in response to DHS's final public charge rule.[11] If consulates begin applying a standard similar to the one proposed by DHS, the more than one million individuals who seek visas from DOS annually would be subject to these new burdensome and arbitrary standards, with many finding themselves unfairly shut out of the country and unable to be with their families throughout the entire struggle. Overall legal immigration could drop sharply, with severe consequences for family unity and the national economy. As discussed above, this would be particularly devastating for Michigan, as our state's workforce is "graying" and immigrants play a vital role in key industries.

IV. Impact on Immigration Attorneys and USDOJ Accredited Representatives

A. Incoherent Adjudicative Frameworks Creates Confusion Around Eligibility

By replacing the current, more predictable standard with a vague and open framework, immigration attorneys and USDOJ accredited representatives will find it next to impossible to advise intending immigrants on their eligibility for lawful permanent residence or other immigration benefits. The process consistently utilized by DHS, DOJ, and DOS for years, involving submission of an I-864 Affidavit of Support, has been a relatively predictable one for adjudicators and immigrants. The proposed rule will add many dimensions and a great deal of confusion to the process, to such an extent that what should be a clear adjustment of status case becomes riddled with uncertainty. For example, currently, a foreign university student seeking marriage-based adjustment of status to a fellow university student spouse is likely to require a

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[10] "AILA, CLINIC, and NILC Express Concerns Over Improper Public Charge Determinations and I-601A Revocations" (Aug. 28, 2018); https://www.aila.org/advo-media/aila-correspondence/2018/aila-clinic-and-nilc-express-concerns-over.

[11] *See* "Exclusive: Trump administration may target immigrants who use food aid, other benefits" Reuters (Feb. 8, 2018); https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK.

joint-sponsor due to the couple's low income as full time students. We as legal advocates are currently able to help a couple in this situation identify a suitable joint sponsor for an I-864 based on review of a potential sponsor's tax returns and other financial documents. The proposed rule would leave us uncertain in counseling our clients about eligibility in this currently clear situation. Combined with USCIS's new policy for placing individuals in removal proceedings, many fully eligible individuals, perhaps individuals like the foreign student in our example, will be extremely fearful to apply when we as legal advocates cannot give firm advice about the likely outcome.

B. DHS Underestimates the Time Burden of the Proposed Rule

As they are required to do by statute, DHS estimates the time burden associated with filing Form I–944 and to receive certified documents is 4 hours and 30 minutes per applicant, "including the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration."[12] This is closer to the approximate amount of time our members often spend counseling clients about the definition of public charge and the nature of the I-864, identifying potential sponsors, gathering and reviewing their financial documentation, preparing the forms, and obtaining sponsors' informed agreement for signature and submission. If the proposed rule is implemented as written, the time it will take to properly assess a case and advise immigrant families will increase substantially. In addition to preparing the form and gathering supporting documentation, lawyers and accredited representatives must assess every factor and consideration listed under the new framework (including evaluating household members), identify other issues not listed in the wide-open rule that might impact the public charge assessment, work through unexpected issues in real case scenarios in order to even begin to offer advice about eligibility. As nonprofit organizations serving and advocating for immigrants with the most limited financial resources, we observe that our clients often work multiple jobs with no ability to make personal telephone calls or take time off when offices where required documents are located can be obtained. Our nonprofit legal services providers note that they have already closed many cases in their practices for people who, though otherwise eligible for status, work jobs that pay the minimum wage (or less given the prevalence of wage theft in their industries). These individuals are part of communities of people who overwhelmingly work for low wages, and so they are already advising significant numbers of clients that they cannot move forward with the legal immigration process due to their inability to identify a joint sponsor who can help them overcome the current public charge test. However, in those cases, we must often review many joint sponsor candidates' tax, income, and asset documents. Aside from the legal uncertainty the proposed rule would bring to every case, the time to advise, document and complete forms, particularly for low income clients, will increase significantly. Based on our deep experience preparing immigration cases, we believe that the proposed rule grossly underestimates the time burden.

[12] 83 Fed. Reg. 51114, 51254 (Oct. 11, 2018).

V. Impact on Immigrants, Families, and Communities

A. Chilling Effect on Immigration Applications and Public Benefits

As advocates dedicated to improving access to legal information, we will seek to educate the communities we serve about the proposed public charge rule and its impact. Notwithstanding these efforts, uncertainty and confusion about what the proposed rule means and how it will be implemented will prevent many qualified and eligible individuals from filing immigration applications out of fear of a denial based on public charge grounds. In addition, as has been well-documented, widespread misinformation and confusion created by drafts of the rule leaked to the press have resulted in a marked decline in the use of a wide variety of important, vital benefits by immigrant families,[13] as well as instability and anxiety among individuals with permanent lawful status - including those in exempt categories such as refugees.[14] We provide high quality free or low cost services as nonprofits, but because of our limited resources, we screen, advise, and refer many potential clients to private attorneys who must charge substantial fees to cover the cost of those services. Some of our clients have acute needs for extra support to their households at precisely the season in which they are paying attorneys' fees and government application fees. It's clear that even eligible U.S. citizen household members will be fearful of accessing benefits while a family member is immigrating or preparing to immigrate because of the vagueness of the test and the complexity of the issue. This chilling effect will disproportionately impact applicants for lawful permanent residence through the family immigration system and unduly harm women and families of color.

The Michigan League for Public Policy has prepared a report, attached as Appendix E, highlighting critical data. Researchers estimate that the chilling effect on benefits access created by the proposed rule would extend to 283,000 people in Michigan. Of these, 114,000 are children. These are people in families with at least one non-citizen member, and who are receiving one of the named benefit programs. In both cases, the large majority of the negatively impacted individuals in the proposed public charge rule are U.S. citizens.1

B. Immigrants' Access to Private Charity is Already Limited

To the extent that immigrant families' access to the public benefits that some immigrants and many family members are eligible for would be chilled by the rule, low income immigrants would in many cases be forced to turn first to private charities to meet basic needs out of fear, misunderstanding, or in the case of the MOMS program, an accurate assessment, of the immigration consequences. This is problematic because many private charities actually *require* proof that an applicant for assistance have already applied for public benefits and been turned

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[13] *See* Migration Policy Institute, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," (June 2018), *available at* https://www.immigrationresearch-info.org/system/files/Chilling_Effects_Public_Charge_Rule.pdf.

[14] *See* The Henry J Kaiser Family Foundation, "Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health," (December 2017), *available at* https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/

down. Given the addition of "federal housing assistance" to the list of benefits considered in the public charge determination in the proposed rule, families could literally be left out in the cold here in Michigan. We have attached an article by one of our steering committee members as Appendix F, documenting troubling issues with immigrant families' access to private charities.

C. The Rule Could Increase Infant Mortality Among Babies Born to Immigrant Mothers in Michigan if CHIP is considered

At FR 51174, the Department specifically requests comment on whether the Children's Health Insurance Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination. In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. In fact, Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S.

Most importantly, Michigan is one at least 15 states that use CHIP funding to cover income-eligible pregnant women regardless of immigration status through the "unborn child option."[15] The unborn child option permits states to consider the fetus a "targeted low-income child" for purposes of CHIP coverage. Michigan provides this coverage through the Maternity Outpatient Medical Services (MOMS) program, administered by the Michigan Department of Health and Human Services. The MOMS program provides outpatient prenatal services and pregnancy-related postpartum services for two months after the pregnancy ends. Emergency Services Only (ESO) Medicaid covers labor and delivery services.

Michigan's MOMS program funds care for poor pregnant women who would be eligible for Medicaid coverage but for their immigration status. Many of our members clients have had coverage through MOMS while, for example, waiting for a family based visa to be available to be eligible to adjust status to Lawful Permanent Resident pursuant to Section 245(i) of the Immigration and Nationality Act. Adding CHIP to the list of benefits could mean that many of our clients -- low-income immigrant pregnant women in Michigan -- could be forced to choose between prenatal care and the negative impact of receiving that care on their future immigration status. This is an unacceptable choice. Our members are extremely concerned about how they would counsel our many clients in this situation were the proposed rule to include CHIP. Prenatal care is critical in maternal and infant health and a major factor in reducing infant mortality. In a major study published in 2018, researchers found that, "Risk of prematurity,

[15] Report, Medicaid and CHIP Eligibility, January 2017 Enrollment, Renewal, and Cost Sharing Policies as of January 2017: Findings from a 50-State Survey, attached as Exhibit F.

stillbirth, early and late neonatal death, and infant death increased linearly with decreasing [prenatal] care."[16]

D. Consideration of Prior Application for a Fee Waiver is a Trap and is Impermissibly Retroactive

It is of great concern to our members, particularly our nonprofit attorney and USDOJ accredited representatives, that under the proposed rule, the prior use of a fee waiver (Form I-912) for any immigration benefit would be considered a factor in determining an immigrant's financial status. Fee waivers are not unique to immigration adjudication. The entire purpose of a fee waiver is to ensure due process is available to those of lesser financial means. Access to justice and due process are core values in our legal system. It's already troubling that so many fees for important applications cannot be waived. But, to penalize someone for using a fee waiver offered to them to promote access to justice and due process is a trap that undermines respect for the rule of law. In addition, consideration of the use of a fee waiver has the effect of underlining and overemphasizing negative factors related to financial status.

In addition, the consideration of fee waiver usage is improperly retroactive. The statute calls for a forward-looking analysis of whether the immigrant is likely to become a public charge in the future. Because a fee waiver captures a single moment in time and not an ongoing benefit, the proposed rule's consideration of *prior* receipt of a fee waiver impermissibly penalizes applicants for their financial status on the date of the application for the fee waiver and not on the date of application for admission, adjustment of status, or for a visa. The potential use of credit scores is similarly troubling both because of the frequency of errors made by private credit reporting companies and because they are not forward-looking and don't anticipate the significant change in circumstances represented by adjustment of status or admission as an LPR -- they are mere prognostications.

In conclusion, the Michigan Coalition for Immigrant and Refugee Rights strongly opposes the proposed public charge rule and asks the Department of Homeland Security to withdraw it. After withdrawing the rule, we urge educational and outreach efforts and investments, perhaps in partnership with Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) given their obligations to fairly administer federal benefits programs, to undo the harm that we have observed that has been done by the publication of the rule. Confusion about the use of benefits is now rampant and withdrawal of the rule will not resolve the crisis that the rule's publication has created for the families and communities we serve.

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[16] Partridge, Sarah and Jacques Balayla, Christina A. Holcroft, Haim A. Abenhaim. *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 29(10): 787-794 (2012).

Promoting self-sufficiency is not achieved by this rule: everyone starts out young, then ages; any person can become disabled at any time; there is no limit on the kinds of personal characteristics that could become liabilities under the rule. If implemented this rule will disproportionately impact low income immigrants, immigrants with disabilities, persons of color, seniors and other members of our communities. It will have unexpected and harsh consequences for any applicant for any affected immigration benefits. Immigrants, regardless of wealth, make our communities stronger. Self-sufficiency and generational advancement is already the story of immigrants to the United States -- we live and lift that story up in our work in communities across our state each day.

Thank you for your attention to this important matter.

Sincerely,

s/Susan E. Reed

Susan Reed
Secretary

On behalf of the Steering Committee of the Michigan Coalition for Immigrant and Refugee Rights (MCIRR)